A TYPOLOGY OF PROFIT-DRIVEN CRIMES

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Biography

R. Tom Naylor is Professor of Economics at McGill University. His main fields of specialization are black markets, smuggling and international financial crime. He is author of six books including *Hot Money And The Politics Of Debt* and *Patriots And Profiteers*. His material on topics such as gunrunning, gold smuggling, black market operations of guerrilla groups, and money laundering has appeared in several criminology journals, including *Crime, Law & Social Change* of which he is senior editor. He was part author of the recent study by the United Nations Office for Drug Control and Crime Prevention, entitled *Financial Havens, Banking Secrecy and Money Laundering*.

1.0 Introduction

The Purpose of this Study

For obvious reasons, the primary functions of traditional law enforcement and the criminal justice system are investigation, prosecution, and punishment of persons deemed responsible for proscribed acts. The main purpose of criminological research, whether conducted by law enforcement or academics, has been to assist those functions, directly or indirectly. To be sure, there is much research that focuses on crimes as events rather than on the criminals who cause those events. But mostly, research has been devoted to studying the social conditions that facilitate the commission of offences. It has paid much less attention to understanding the methodology by which and institutional context through which particular actions take place.

The resulting deficiencies are particularly marked with respect to profit-driven offences. The type of information collected by police or prosecutors for the purposes of a particular criminal proceeding may be quite different from the type of information necessary in understanding the nature of on-going criminal markets or the modus operandi of the underworld economy as a whole. Nor is academic criminology much more helpful – generally speaking, crimes are used to define categories of offenders rather than being a subject of (more technocratic) interest in and of themselves.

These shortfalls also afflict the categorization of acts. The practice of dividing criminal code offences into three broad categories – crimes against persons, crimes against property, and trafficking – provides little useful information with respect to context or process. More specifically, due to lack of systematic definition and subsequent overlap, umbrella terms such as *economic*, *commercial*, and *white-collar crime* are frequently used interchangeably, even by socalled "experts in the field." The fact that some of these terms refer to acts and others to persons doesn't seem to matter (e.g., respectively, commercial vs. white-collar crime). It is no surprise that the specified offences covered by these are similarly confusing and impractical. For example, means (e.g., telephone pitches and computerized communications) and ends (e.g., fraudulent transfers of wealth) are oftentimes confounded. All this creates problems that go beyond simple lack of terminological neatness. Without knowing just what a problem or objective is, it seems rather difficult, to say the least, to design a strategy or policy to deal with it.

Most databases employ static categories that shed little or no light, beyond the most elementary definitional sort, on what offenders actually do. Crimes are typically lumped into groups based on degree of "seriousness," which, in turn, refers to the sentence length particular offences carry. This is, on one level, tautological – presumably the justice system does not hand out sentences in inverse proportion to the seriousness of the offences. It is also debateable if seriousness should be assessed by the institutions responsible for dealing with the offence, rather than by reference to more objective determinants. Moreover, when a concept like seriousness is used, it should be specified "serious to whom?" Perhaps most important, such taxonomies attempt to capture a dynamic process in a freeze-frame, ignoring the possibility of wide swings in public mood and opinion. It should never be forgotten that pretending to be a witch is still a criminal offence in Canada – so, too, a captain seducing female passengers on boats and the uttering of phoney one cent coins.

Indeed there is a sense in which the very term *crime* is misleading, except on a strictly tautological level (i.e., a crime is, by definition, something which violates statutes that

prescribe criminal sanctions for particular acts). The term crime, particularly when applied to profit-driven offences, lumps together actions that, judged in terms of their inherent nature and/or consequences, are quite distinct. It could even be argued that the term crime as a composite category should be abandoned entirely. It conjures up an exogenous and amorphous menace, an "underworld" populated by an intrinsically evil subset of humanity, instead of the view that crimes are endogenous to modern society and could be committed by the boy or girl next door. Furthermore, what is truly important is not "crime" but "crimes," a term that automatically forces attention onto what makes them different instead of forcing upon a wide range of offences an artificial unity.

The question then becomes, is there an alternative system of analysis that can help to fill in shortcomings of more traditional methods of classifying offences?

There are many different ways to create such a taxonomy. Which is more efficacious depends on the analyst's objectives. If the purpose is to focus the public's attention on a broad category of concern, a phrase like *crimes against the environment*, for example, would suffice. But if the objective were to define more precisely what has occurred, with a view to prescribe preventive policy, such a broad term would be of little assistance. Rather, it would be necessary to understand how toxic waste is illegally dumped, endangered species are poached, or companies manage to evade the ban on CFCs. Alternatively, if the objective is to focus on social factors, offender characteristics might be the salient determinants – youth or white collar crime for instance. Yet again, the objective might be to focus on characteristics of victims – they might be individuals who could be divided by socio-economic class, age, or sex; or they might be businesses or "society" at large, etc.

But here the objective is more modest: it is to disaggregate the concept of profit-driven "crime" by examining a possible typology that is functional, rather than sectoral, that is process- rather than offender-based, and that is applicable to all offences where profit is at least partially the motive. This has a number of advantages.

One is to clarify the precise nature of the economic forces at work, and thereby gain a better understanding of the possible economic (and social) costs. It may be that once the economic logic of a particular offence is understood, not only can its relative seriousness be judged - in terms other than the circular one of calling a crime more serious if it merits a longer sentence - but in some cases it might serve to call into question whether something really should be a crime. At the same time it might help to better highlight points of vulnerability of both perpetrators and victims.

Second, and closely related, it might help put an end to wild numbers (e.g., "Bre-X was a 6 billion dollar fraud" or "Surfing the Web helped save CIBC from a $25-billion US hit") used by the mass media to titillate audiences. By better understanding the economic context and constraints under which profit-driven crimes operate, it may be possible a priori to set logical limits to the size and frequency of certain types of offences.

Third, once the actual division of labour is understood, it might help delineate responsibility within multiple-person crimes. A typical profit-driven crime, contrary to the impression given by legal definitions, is not an isolated act but a complex series of interrelated actions.

Fourth, the more is known about the actual economic "organization" of crimes, the more efficient and effective can be tools designed instead for deterrence and prevention.

2.0 The Typology

The working hypothesis is that profit-driven crimes can be divided provisionally into three categories: predatory, market-based, commercial.

First are crimes of a *predatory* nature that involve (with some overlap):

- redistribution of existing wealth;
- bilateral relations between victim and perpetrator;
- a non-business or purely fake business context;
- involuntary transfers that use force (or its threat), although deception may suffice;
- readily identifiable victims;
- transfers that take place in cash, physical goods, securities, or even information;
- losses that are simple to determine;
- an absence of any notion of fair market value;
- an unambiguous morality – someone has been wronged by someone else; and/or
- the need for restitution.

Predatory crimes can be further subdivided into those which victimize:

- private citizens;
- business institutions; or
- the public sector.

Possible examples, among many, include acts of:

- payment card fraud (against citizens);
- bank fraud (against businesses); and
- currency counterfeiting (against government).

Second are *market-based* crimes that involve (with some overlap):

- production and distribution of new goods and services that are inherently illegal;
- multilateral exchanges;
- a context that consists of an underground network;
- voluntary transfers;
- difficulty in defining victims;
- income to suppliers and expenditure by consumers;
- transfers that take place in cash or bank instruments or by barter of valuables;
- an implicit notion of fair market value;
- ambiguous and arbitrary morality; and/or
- confusion over how to treat “proceeds” in the absence of victims.

Market-based crimes can be further subdivided into those involving the evasion of:

- regulations;
- taxes; or
- prohibitions.

Regulations can be further subdivided into those affecting the terms of sales (e.g., price or rate regulations), those affecting to whom items are sold (e.g., prescriptions for certain drugs), and those affecting how much in total is allowed on the market regardless of to whom and at what terms (e.g., quotas on fisheries catches).

Prohibitions, too, can be subdivided into those dealing with absolute contraband (e.g. those dealing with explicitly prohibited substances – like recreational drugs) and relative contraband (e.g., those that become contraband because of how they were acquired – like stolen goods).

Possible examples, among many, include:

- loan-sharking (regulation evasion);
- smuggling CFCs (excise tax evasion); and
- trafficking in endangered wildlife (prohibition evasion).

Third are *commercial* crimes that involve (with some overlap):

- legal goods and services produced or distributed using illegal methods;
- multilateral exchanges;
- a context consisting of a normal business setting;
- superficially voluntary exchanges with a hidden, involuntary aspect;
- victims by virtue of the existence of fraud;
- income "earned" but unmerited by virtue of illegal method employed;
- transfers that overwhelmingly take place using normal bank instruments;
- some notion of unfair market value;
- unambiguous morality, in theory, because fraud is involved; and/or
- the need for restitution.

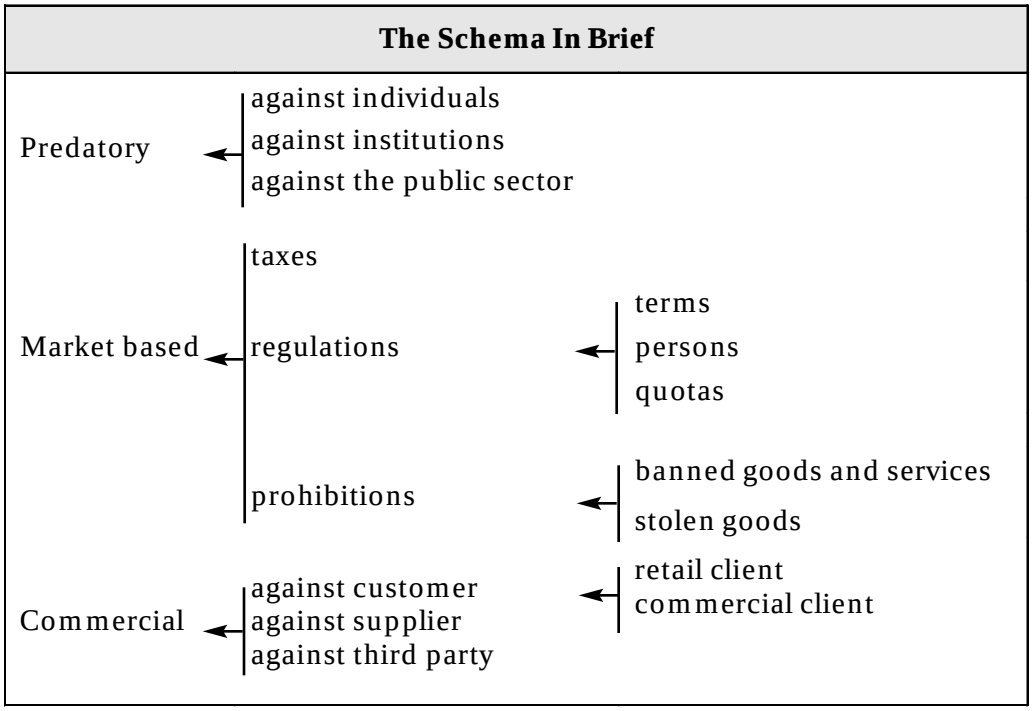
Commercial crimes can be further subdivided into those involving:

- fraud against suppliers of inputs;
- deception against customers of output; and
- externalization of costs at the expense of the larger society.

Possible examples, among many, involve:

- fraudulent bankruptcy (involves fraud against suppliers of inputs);
- telemarketing scams (involves deception against customers of output); and
- "midnight dumping" of toxic waste (involves the externalization of costs at the expense of the larger society).

Table 1: The Schema in Brief



One salient difference is the implications of each type of offence for national income and economic welfare. To understand this, it is vital to keep in mind the essential distinction between wealth and income. In economic terms, wealth refers to a *stock* of assets (physical, financial, even informational) that have been accumulated; and it is measured *at a point in time*. On the other hand, income refers to a *flow* of purchasing power accruing to an economic entity (e.g., firm, worker, or rentier) *per unit time*. The difference can be handily summed up by the fact that a bank account balance represents wealth, whereas the interest earned each day or month or year (depending on the convention selected) on the accumulated balance represents income. When income flows increase, the gross national product (GNP) rises. But there is no direct relationship between wealth and GNP. It is possible to have enormous amounts of accumulated wealth in an economy functioning on its knees. This distinction is central to what follows.

Thus,

- Predatory crimes are crimes purely of redistribution of existing wealth. They do not generate new goods or services and therefore do not increase total income flows or have any direct effect on GNP.

- Market-based crimes, by contrast, involve the production and distribution of new goods and services, and therefore have a *positive* impact on GNP.

- Commercial crimes involve the application of illegal methods to the production and distribution of legal goods and services that would otherwise be produced by someone else using legal methods. Their impact on GNP depends on the subcategory into which they fall.

    - If the offence involves defrauding a supplier by underpaying or not paying for inputs, it simply redistributes income, leaving the total unchanged.
    - If the offence involves cheating a customer who overpays for value not received, GNP, adjusted for the quality of goods, *should* fall – the customer will have to divert extra income into making up the shortfall in quality or quantity, therefore reducing that available for other expenditures.
    - If the offence involves a firm cutting costs at the expense of a non-transacting party – the environment, for example – the same supply of goods and services becomes available to the market at a lower cost, or a larger supply at the same cost, in both cases actually increasing measured GNP. Although, obviously, sensible environmental accounting should factor out such a spurious increase.

This simple schema seems clear enough in theory. However, it requires some modifications and clarifications before it can be applied.

Rather than representing a static taxonomy of simple acts, the categorization suggested above tries to comprehend complex and interactive processes potentially subject to a variety of feedback mechanisms. Therefore, when actually applied, there may be some definitional ambiguities, operational complications, and special complexities deriving from the fact that crimes take place in an institutional context. More to the point, by breaking crimes down into a series of actions, it reveals how misleading standard terminology can be.

Definitional Clarifications

- Commercial crimes involve crimes *by* entrepreneurs or their firms in the process of preparing for or making market exchanges.[1] On the other hand, predatory crimes are committed not just against individuals, but also *against* entrepreneurs or their firms (e.g., employee theft).
- A predatory offence may appear to take place through a business setting, but this is purely a front for a once-and-for-all or episodic transfer of wealth. A market-based offence is often confounded with a business – there is a huge literature premised on this false analogy. But in reality, because it deals with illegal commodities, a market-based offence must really be seen as occurring in the context of an underground network, *even if that network is embedded within a legal business structure*. On the other hand, a commercial offence involves the use of a genuine and on-going legitimate business to twist the terms of trade and therefore skew the distribution of income. Although the distinction seems clear in principle, in practice the two can shade into each other.

[1] In this sense, the term commercial crime comes close to, but is not quite the same as, the concept of corporate crime that has succeeded in sewing all manner of confusion in criminological discussion (e.g., attempts to figure out how a corporation, as distinct from its directors and managers, can have a mens rea). See, for example, Edwin Sutherland's *White Collar Crime*, New York: Holt, Rinehart, 1949, the work that began the debate; and John Braithwaite, *Corporate Crime in the Pharmaceutical Industry*, London: Routledge, 1984, probably the best work in the field.

- It seems clear when a predatory offence takes place(e.g., a mugging). A market-based offence, too, is usually quite clear (e.g., someone sells a few grams of cocaine to an undercover police officer). But when the act falls into the commercial category, it is often difficult to determine if it is really a crime. Where does sharp business practice end and fraud begin? At what point does a high-pressure sales tactic become a confidence trick? At what point does effective advertising become deliberately deceptive? It is at least arguable that all advertising involves deception because people rarely need the goods being offered. In theory a telemarketing fraud involves conning people into paying for either inferior, misrepresented, or non-existent goods. But the instructions given to salesmen for bona fide companies using telemarketing techniques to sell genuine, good quality products involve such blatant manipulation to make an unwilling potential client say "yes," that it is really hard to see the distinction.[2]
- This same ambiguity appears in securities cases, which also fall most logically into the commercial crime category. If the case involves falsifying a prospectus with completely fabricated sales figures or seeding an ore sample prior to announcing an issue of junior gold-mine shares, the fraud is clear. In fact, if the gold-mining company is purely bogus, the crime could even be classified as predatory in nature. However, that kind of clarity is rare. Most prospectuses are designed to excite rather than inform. If this is a crime, then the paddy wagons should be rolling almost non-stop between the financial districts of the big cities and the local jails.
- While both commercial and predatory crimes can involve elements of stealth and deception, there is a distinction. In those predatory cases where deception, rather than intimidation, is the primary tool, someone gains property at the expense of another by misrepresentation, with no pretence to an exchange of value. On the other hand, a fraudulent sales pitch involves gaining consent, albeit to unfair or duplicitous terms of exchange. In cases of straight con jobs, where there is no value at all transferred in exchange for income, the border becomes so fuzzy that it probably matters little which category is used. The judgement is a purely empirical one – did the offence take place within and as an extension of a genuine business context or was the apparent business simply a shell whose sole function was deception?
- The three subcategories of market-based crime are not absolutes. Some things could fit one or the other depending on the particular legal context. Gambling, for example, is sometimes banned completely. In some places it might be illegal only because it fails to collect taxes levied on legal gambling. In others, the problem is regulatory violation – the state permits gambling in state-licensed establishments only.
- An offence involving trafficking in banned or regulated goods falls into the market-based category. But if the consensual transaction involves a legally-taxable commodity, the government appears as an aggrieved party. In this event, in addition to the market-based offence, there is something akin to a commercial one – the government, as a participant, has been cheated by the terms of exchange. However, for purposes of this typology, the fiscal offence is separate. The basic transaction is still a peer-to-peer consensual one involving willing and knowledgeable parties. The government appears

[2] For example, I have in my files the instructions issued to its salespersons by XXX, a manufacturer of very high quality kitchen knives, telling them how to counter each argument against, how to coax people that the extremely expensive items are a bargain, and how to use people's own insecurities against themselves. The document insists that the role of the salesperson is not to trick or high-pressure the client but to "help the customer reach the right decision." After all, the document stresses, "Asking people to buy is doing them a favour."

more as part of the institutional and legal infrastructure within which crimes occur – in this respect taxes are no different than regulations or prohibitions. Evasion of any of them defines the good or service being traded as an intrinsically illegal one. Government can, of course, appear as a victim in the same sense as private citizens or institutions, but only in predatory or commercial offences when it is on the receiving end of acts of theft or fraud.

- There is a crucial distinction in this typology between direct (i.e., income) taxes and indirect (i.e., sales or excise) taxes. Evasion of an indirect tax, which falls on a commodity, shifts that commodity from a legal to an illegal good, and therefore creates a market-based offence. Evasion of income taxes has no such effect – income tax evasion is a completely separate category, properly dealt with in the income tax act and not the criminal code. A transaction can be perfectly proper in its own right, even if evasion of income taxes on the income generated by that transaction occurs.

Operational Complications

- A commercial crime is defined as one in which an inherently legal product is supplied in some illegal way. At the heart of the definition is the presumed absence of fair market value. However "fair market value" is difficult, if not impossible, to define accurately: it boils down more to an ideological than an operational construct. Efforts to establish a clear meaning usually refer to neoclassical concepts of perfect competition which cannot, except under the most unrealistic assumptions, actually lead to a market-clearing general equilibrium. The theory of market behaviour that most closely approximates reality is not neoclassical but neo-Schumpterian.[3] In this view, each firm attempts to introduce into the market-place an innovation to create a temporary monopoly, and with it, temporary monopoly profits. Over time others will try to move in to capture those high profits, with the result that competition wipes them out. If this is how markets behave, then "fair market value" is meaningless in the short run, which is, realistically, the only time horizon over which criminal transactions can be presumed to exist.
- In practice the contrast between predatory and market-based offences at times seems murky. Some predatory crimes, for example, require market-based ones to dispose of the merchandise or launder the proceeds. Nevertheless, such transactions are secondary. The primary act generating the money is unambiguously predatory because it involves an involuntary transfer of existing wealth. Thus, there are really two quite distinguishable offences - theft and fencing of stolen goods are distinct crimes not only under this typology but under existing statutes. Indeed, there is even a third level, washing the resulting cash. The matter becomes even clearer when the acts are put in sequence – first the predatory act to acquire, then the market-based one to dispose of the proceeds, then perhaps another market-based one to launder the money.
- Similarly, some market-based offences are committed in an environment punctuated by force or fraud. Sometimes (though probably much less often than stereotypes would

[3] See in particular Joseph Schumpter, *The Theory of Economic Development*, New York: 1953.

suggest) drug dealers settle accounts at gunpoint and adulterate their merchandise before sale to final customers. But in the great majority of instances, the basic act is truly a consensual contract between supplier of and customer for new goods and services. If violence is employed, usually in disputes between dealers over division of profit, it constitutes a separate offence. However, currently, if a banned product like cocaine is cut with rat poison, unless the consumer actually dies, there is unlikely to be much law enforcement interest.

- Some offences may seem to fall into several categories at once. However this may be due to the fact that they involve a series of subsidiary acts, each of which may have distinct economic characteristics. So it is with currency counterfeiting. When phoney money is passed on the wholesale level to complicit underworld parties, perhaps in exchange for real currency at some deep discount or in exchange for drugs, the act seems to fit the market-based category – there is a consensual transaction in an illegal commodity. But when phoney money is passed to unwitting retail parties, it would involve a predatory offence. There is also a complication in defining the victims. The primary victim would seem to be the person who gets stuck with the counterfeit, with no compensation. But another is the government whose "intellectual property" has been infringed, whose capacity to circulate bona fide money is reduced to the extent the counterfeit has replaced it in circulation and whose security costs are driven up in an attempt to preclude further incidents.
- The same kind of pattern appears in credit-card fraud. Theft of a credit card, or of the number, is a clear case of a predatory offence. Sale of a stolen credit card is a market-based offence. Use of a stolen credit card, or number, is, once again, predatory. Indeed, it is possible to argue that when a merchant does a multiple run-through for the same sale, it is a commercial crime - on the surface this seems to constitute a twisting of the terms of trade in an otherwise legitimate business transaction. However, this is another instance where the frontier between a predatory and a commercial offence gets so blurred that the choice of category becomes arbitrary.
- The same holds true for intellectual property crime, only one step further. The sale of goods using fake brand names, for instance, or of bootleg videocassettes and software, involves both a predatory component (i.e., the misappropriation of intellectual capital, a form of wealth), a market-based one (i.e., the sale of illegal goods), and a commercial one (i.e., the misrepresentation of the product if it is sold as if it were the genuine article and at the same high price). What is interesting here are the various layers involved. One person or group commits the predatory offence of manufacturing something based on stolen intellectual property; another markets the product through underground channels to, in most cases, fully knowledgeable distributors; the third sells it to an (often) unsuspecting public. While each layer has committed a distinct offence in terms of this typology, they are all essential to each other's existence.
- Whether an act like prostitution is predatory or market-based can depend on the exact circumstances surrounding it. Normally, prostitution is a market-based phenomena – there are willing sellers and willing buyers engaged in a (quasi-illegal) consensual exchange. But clearly if the person supplying the sex is held in some sort of physical or debt bondage, the pimp or owner, rather than the provider of the service, appears on the supply side of the market equation. In this case, there is a willing customer and a willing seller, but the transfer of goods or services cannot be said to be consensual because they

are, in a sense, stolen from a non-consenting third party. Nonetheless the typology still applies – there occur simultaneously distinct market-based and predatory acts.

- A different type of complexity can occur in cases that span all three categories. Loan-sharking at first seems like a commercial crime – it involves a legal service, the lending of money, on illegal terms. However, it is often argued that the usurious interest rates are only possible to the extent that intimidation stands behind them, making the repayments smack of extortion, a clearly predatory offence. Yet normally the clients are fully aware of the terms on which the loan is negotiated – rarely can it be argued that someone is forced to borrow from a loan shark, and if that person is so forced it is not the loan shark that does the forcing. This suggests a clear case of a market-based, regulation-evading crime. Ultimately, in such a case, the matter comes down, not to a theoretical, but an empirical issue. Are most instances of usury accompanied by the threat of force, do they involve duplicity in getting the client to accept the terms, or are the negotiations perfectly open, in which case extremely high interest rates might reflect higher risks and "market imperfections"? (See Appendix II.)

Institutional Complexities

- Although certain crimes might fall neatly into one category, they nonetheless take place through radically different types of operational networks and distributional chains. Bear gall-bladders, for example, start with poachers, are traded to underground traffickers who may also deal in drugs or guns, are turned over to smugglers, and are eventually sold overtly in perfectly respectable Chinese traditional pharmacies. Guns, however, start with legal suppliers, licensed dealers or gun-shows, and enter black market chains to be sold covertly on the street. Jewellery, by contrast to both, starts in a legal manufacturing operation (even though the materials may be smuggled) and is traded through regular channels (though often with no paper), to be sold through apparently respectable shops (with the jeweller either making the client a cash deal or selling the item for full price and him/herself pocketing the tax money). Whatever the institutional mechanics, application of the typology permits isolation of the essential core actions.
- On the other hand, many crimes that fall into quite different categories, may in fact, take place within a common milieu and be mutually supportive. Take for example, the sweatshop. Although it is (once again) on the decline in North America, during its 1980s upsurge, business drew its labour force from moonlighters, social security cheats, and illegal aliens, used capital from loan sharks who might have been recycling money from drugs or illegal gambling, depended on transportation by companies owned by mobsters who used their control for labour racketeering and extortion, yet ultimately sold its output to respectable retail chains. Predatory, market, and commercial crimes were all involved in maintaining inventories and healthy profit margins in "legitimate" business. (This is examined in greater detail in Appendix III.)

The upshot of all the qualifications and clarifications is that the categories cannot be expected to apply in a rigid and deterministic fashion. Nonetheless, such a typology, which disaggregates the concept of profit-driven crime into subcategories that better capture their essential qualities, can help improve understanding of the economic consequences, and perhaps point towards means by which they can be addressed other than the traditional justice system.

In the following section, a preliminary effort is made to classify many of the major profit-driven offences (those seemingly of most public concern) – with one important clarification. There are many subsidiary and secondary crimes associated with primary offences. The analysis restricts itself to the primary – the acquisition of illegal income or wealth, without regard to the use of money laundering techniques to hide it, of corruption to protect it, or of tax evasion to increase the net return. Wherever possible, in tables 2 to 4 that follow, terms are used that reflect popular rather than strict legal usage. As the long list of clarifications and ambiguities noted above made clear, the categories are not written in stone.

Table 2: Predatory Crimes

Predatory Crimes **Victims :**		
Private Citizens	**Business Institutions**	**Public Sector**
Counterfeit Payment Cards	Telecommunications Theft	Counterfeit Currencies
Auto Theft	Bankruptcy Fraud	Counterfeit Passports
Extortion	Maritime Fraud	Social Security Fraud
Involuntary Servitude	Bank Fraud	Poaching
Kidnapping	Robbery	Income Tax Evasion
Sex Slavery	Break & Enter	Illegal Immigration
Theft of Cultural Property	Arson	Government Contract Fraud
Stock Fraud	Insurance Fraud	
Prime Investment Scheme	Theft of Intellectual Property	
	Embezzlement	

Table 3: Market Based Crimes

Market Based Crimes **Evasion of :**		
Regulations	**Taxes**	**Prohibitions**
Quota Violations	Bootleg Alcohol	Solicitation
CFC Regulations	Cigarette Smuggling	Sale of Stolen Goods
Art & Antiquities Smuggling	Jewellery Excise	Drug Trafficking
Loan-Sharking	Bootleg Fuel	Firearm Trafficking
Firearm Trafficking		Alien Smuggling
Sale of Out of Season Game/Stock		Endangered Species Trafficking
		Money Laundering
		Child Pornography
		Gaming and Betting
		Body Parts Trafficking

Table 4: Commercial Crimes

Commercial Crimes At the expense of :		
Suppliers/Investors	**Customers**	**Broader Society**
Bankruptcy Fraud	Telemarketing Fraud	Transportation of Dangerous Goods
Insider Trading	Consumer Fraud	Storage of Dangerous Goods
Stock Fraud	Pyramid Schemes	
False Invoices	Advanced Fee on Guaranteed Loan	
	Price Fixing	
	Theft of Intellectual Property	
	Bribery	

To run a further test of the viability of the typology, nine cases were examined in-depth, three from each category, and within those three categories, one each from the three identified subcategories. The major criteria applied to each were the following:

- Was the main mechanism in transferring value force, free-market exchange, or fraud?
- Did the transfer involve redistribution of wealth, creation of new income, or redistribution of income?
- Did the transaction take place in a non-business (or fake business), underground network, or legitimate business context?
- Was the main means of transfer of value property, cash, or bank instruments? Although these criteria sometimes overlap, each emphasizes a different aspect of the offence. The more of these criteria that can be applied, the less the range of ambiguity.

Choice of Cases

(1) Predatory Crimes:
a) payment card fraud
b) bank fraud
c) currency counterfeiting

(2) Market-Based:
a) loan-sharking
b) CFC smuggling
c) traffic in endangered species

(3) Commercial:
a) fraudulent bankruptcy
b) telemarketing scams
c) toxic waste dumping

Characteristics

Victimizing:
private citizens
business institutions
public sector

Evading:
regulations (terms)
taxes
prohibitions

Involving:
fraud against investors or suppliers
deception against customers
illegal cost reduction at third party expense

- Where it seems that, in the great majority of instances, an offence should be in one category rather than another, it is marked (x).
- Where an offence seems equally at home in two or more, it is indicated (x) in all relevant categories.
- Where a traditional category does not seem to suffice to capture all of the component acts of a particular offence, a second may be added (e.g., prostitution is listed separately from sex slavery in the above tables).
- Where there is a good chance it could fall into more than one category, the most probable is indicated (x), with a (?) to show other possibilities.

The results are summarized in the following four tables (tables 5 to 8):

Table 5: Main Mechanism

Main Mechanism			
	Force	**Free-Market Exchange**	**Fraud**
Force/Deception			
Payment Card Fraud	**X**		
Bank Fraud	**X**		
Currency Counterfeiting	**X**		
Market Based			
Bear Gall Bladder Trade		**X**	
Loan-Sharking		**X**	
CFC Trafficking		**X**	
Business Fraud			
Fraudulent Bankruptcy			**X**
Telemarketing Fraud			**X**
Illegal Toxic Waste Dumping			**X**

Table 6: Nature of Transfer

Nature of Transfer			
	Redistribution of Wealth	**Creation of New Income**	**Redistribution of Income**
Force/Deception			
Payment Card Fraud	X		
Bank Fraud	X		
Currency Counterfeiting	X		
Market Based			
Bear Gall Bladder Trade		X	
Loan-Sharking	X	X	X
CFC Trafficking		X	
Business Fraud			
Fraudulent Bankruptcy	?		?
Telemarketing Fraud	X		X
Illegal Toxic Waste Dumping			

Table 7: Institutional Context

Institutional Context			
	Non or Fake Business	**Underground Network**	**Legitimate Business**
Force/Deception			
Payment Card Fraud	x		
Bank Fraud	x		
Currency Counterfeiting		x	
Market Based			
Bear Gall Bladder Trade		x	
Loan-Sharking		x	
CFC Trafficking			x
Business Fraud			
Fraudulent Bankruptcy			x
Telemarketing Fraud			x
Illegal Toxic Waste Dumping			X

Table 8: Means of Payment / Transfer of Value

Means of Payment/Transfer of Value			
	Property	**Cash**	**Bank Instruments**
Force/Deception			
Payment Card Fraud	**x**	**x**	**x**
Bank Fraud			**x**
Currency Counterfeiting		**x**	
Market Based			
Bear Gall Bladder Trade		**x**	
Loan-Sharking		**x**	
CFC Trafficking			**x**
Business Fraud			
Fraudulent Bankruptcy			**x**
Telemarketing Fraud			**x**
Illegal Toxic Waste Dumping			**x**

In the next section, each of these nine cases is subjected to closer examination.

3.0 Detailed Analysis of Selected Cases

3.1 Payment Card Fraud

Payment card fraud (i.e., involving credit, debit, ATM, or smart cards) may be the most common of profit-driven crimes in terms of incidents, though not of value. This reflects the enormous number of cards, the fact that people assume (wrongly) that they do not bear the costs and are therefore sloppy on security, the minimal risks involved in this type of crime, the accessibility of the technology for faking, and the card's changed role. There was a time when the card functioned like a plasticized traveler's letter-of-credit; today, it is simply a tool, often physically unnecessary, for electronically conveying financial information.

While it is true that technology can also be used to increase security, with payment cards, as with currency counterfeiting, there is a constant race between enhanced security and those intent on breaking it, in which the time lag seems to be constantly shrinking. However, there is no evidence that use of such cards is likely to fall – on the contrary. Banks love them for the high interest rates they can charge, while merchants like the faster turnover of goods and freedom from the nuisance of collecting on receivables. The only loser is the consumer – whose debt and debt charges soar and who, ultimately, pays the cost of fraud in the form of higher service charges. And that cost will continue to grow as fraud rises, until iris-scanners replace current security features (even then high-tech methods of beating the scanners will probably not lag far behind).

Although at heart the crime is always the same – fraudulent access to the victim's bank account either directly or indirectly – there are a multiplicity of ways in which the various steps can be executed. Techniques for acquisition of actual cards run the gamut from stealing from victim's wallet/purse, pilfering newly delivered cards in the mail, and palming and/or substituting at a point of sale. One group of Montreal CEGEPS students working at a service station proudly revealed (even to the point of permitting photographs) to an enquiring McGill student, who helped collect information for this document, their technique for jamming the card into the corner of the revolving drawer that conveys the card from client to cashier and back. If the client complained, it looked like an accident; if the client did not, the group was rewarded with a shopping frenzy at a nearby mall.

Increasingly it suffices simply to steal account information through telemarketing-type phone scams, internet theft, tip-offs from insiders at banks or credit card companies, shoulder surfing, dumpster diving or a host of more complicated devices, and then make mail-internet-phone purchases. It works until the victim gets his/her next statement.

Perhaps the fastest growing fraud involves retail clerks passing cards through a swiper (a typical swiper can hold the information from 50-100 different cards at once) to get their electronic data, then selling the data (it can be marketed over the internet) or passing it to confederates who create counterfeit cards. This requires re-embossing and re-coding machines which can be easily bought. A blank card is encoded with information downloaded from a computer onto the magnetic strip, then embossed with holograms and gold foil added to make it look authentic. A new name is then added to original owner's card information.

The key in all cases is to maximize the time between theft of the card and/or information and the victim's awareness *and* subsequent reporting of the loss (two different things). To increase the delay, sometimes fake or expired cards are planted to replace those stolen from wallets or handbags. Alternatively the card/number is obtained in such a way that the victim is embarrassed to come forward. Prostitutes sometimes pick client's pockets. Even better, internet porn sites are notorious for getting a card number, and then doing multiple run-throughs. If the sums are small, the embarrassed individual may never report and simply swallow the losses.

If the credit card fraud involves fraudulent applications or counterfeit cards using information stolen from the credit card company database, the delay is maximized. Because the original card was never stolen, it does not get cancelled. Although, the owner of the counterfeit is probably wise enough to use it quickly, then discard it in favour of another. The user might even resell the first at a discount over the original purchase price, the discount varying according to the age of the card and the knowledge the new purchaser has of its history.

Until recently, stealing from the mail seemed almost as good, because the companies sent out replacement cards a few months before the old ones had expired, and of course, they arrived without signatures. However, there is now a new "security" measure – the card comes with a special numeric code which the client must phone into the company to get the card activated. Anyone intercepting the card automatically intercepts the number, too, but presumably once the card is activated, the old one is automatically cancelled. (If not, then clearly the process is useless for security purposes.) It is far from perfect. The proper owner would discover his/her new card was intercepted through the embarrassment of having his/her existing card refused.

No matter how the physical card is obtained, even if it quickly makes a hot list, it can be used for other crimes, particularly auto theft. Often auto rental companies in small towns still do not have their computers linked to those of the credit card companies, and even in big cities on a busy day, the clerks simply take an imprint without checking. The scam artist, who undoubtedly used a fake driver's license, then drives off with a new car, straight to the nearest chop shop.

Perpetrators of these scams also run the gamut. Most of the single card operations are purely opportunistic. There may be several individuals involved in swiping or telemarketing type scams. The only time something which might be called (if it were ever possible to get a proper definition) "organized crime" gets seriously involved is in multiple-card counterfeiting operations. On the whole, while credit cards are the primary target, ATM scams are growing rapidly – although, because clients are often unaware of the theft from their accounts, it is difficult to get an exact handle on its extent.

The most primitive forms involve card-trapping – for example, inserting glue into the ATM slot, and having a typed sign beside it telling the client that if the card is retained, they should tap in their PIN number three times, then punch the enter key. Meanwhile the scam artist notes the pin number – by old-fashioned shoulder surfing (the most experienced can figure out the numbers by following the client's shoulder movements) or by hidden cameras. After the party leaves, the crook fishes out the card and uses it along with the PIN number. Alternatively the perpetrator can be standing near the mark, and offer his/her cell phone with an official-looking card indicating the number to call in the event of a stolen or lost ATM card – an accomplice waits at the other end of the line to take down the details. In one of the most audacious instances, a ring of bribed employees at service stations and convenience stores

permitted one ring to attach laptops to point-of-sale terminals, and to install video cameras that watched over the client's shoulder. Each time a customer swiped the card, the laptop recorded the card number while the camera caught the PIN number. All that was then required was blank plastic and the proper encoding equipment.

The offence reveals most of the fundamental characteristics of predatory crime – there is a clear victim (albeit because of the illusion that the client is indemnified against loss, the victim might not realize it); there is an unrequited (unilateral) transfer of wealth; and the great majority of such fraudulent transfers take place in a non-business setting, though occasionally a business front is used to gain access to cards or card data. True, sometimes transfers occur through bank instruments – fraudulent charges against the victim's card lead to deposits in the predator's bank account, usually in some distant, preferably offshore, jurisdiction. However, it is also common to use a fraudulent card either to purchase merchandise, often for resale on the black market for cash, or to remove money directly from the victim's bank account. Which will prevail depends in good measure on whether or not the device is a credit card on the one hand, or a debit, ATM, or smart card on the other; and even credit cards, with PIN numbers, can function as debit or ATM cards.

3.2 Bank Fraud

The term *bank fraud* is used in a very loose way in both popular and police discussions. It can refer to acts in which people victimize banks, in which banks victimize people or other business institutions, or in which banks are merely (more or less) passive conduits through which frauds involving other parties are conducted. Indeed, many of the things denounced as frauds are perfectly consistent, simply, with poor business judgement, making them difficult to prosecute.

Note, for example, some of the terminology developed during the great Savings & Loan bank debacle in the USA during the 1980s.

- Bust-out: when insiders divert money to their own purposes, then take the money, and run.
- Cash-for-dirt: when the bank makes a real estate loan on raw land where no development has occurred.
- Dead-horse, dead-cow swaps: when one bank swaps bad loans with another, and both carry them on the books as sound new lending.
- Straw borrowers: when someone fronts for the true borrower who would not qualify, for financial or moral reasons.
- Nominee loans: (similar to above) when someone fronts for another party who is beyond their lending limit, for example.
- Reciprocal loans: when the loan officer of one bank borrows from the loan officer of another bank, and vice versa, either for personal reasons or to puff the balance sheets.
- Land flip: when land is purchased with a bank loan and immediately passed to another "buyer" who in turn has obtained an even higher loan probably, but not always, from another bank.

- Linked finance: when a deposit broker brings in money to a bank in exchange for a guaranteed loan to that broker or someone he/she designates.

Except for the first, none of these is inevitably linked to a predatory criminal offence; and while most of the others border on commercial crimes, and all of them are dangerous to an institution's financial health, there is no guarantee that the bank will be any the worse off as a result. From that point of view, the issue is not fraud or misrepresentation in obtaining a loan, but what happens afterward to the money – is it merely diverted in a premeditated way, or is it used for speculation? And if it is the second, a successful speculation may allow the borrower to repay the loan, leaving the financial institution better off despite the fraud or misrepresentation.

Hence, for purposes of this analysis, the term bank fraud is restricted to actions that involve:

- deliberate falsification of collateral or other documents;
- extraction of loans or other instruments from the institution, not from individual deposit holders;
- intention of immediately diverting that money to other purposes; and
- no intention of repayment.

A loan fraud can be pulled off by either insiders or outsiders. The only difference will be the exact mechanics of executing and covering up the crime. With strictly outsider operations, the scams are likely to be once and for all and therefore relatively large. Purely insider operations might be a series of small fraudulent "loans" or one large one, after which the insiders vanish. Mixed inside-outside operations are most likely in the form of the series of small loans because insiders (corrupted or blackmailed) are in a position to constantly alter records and hide small losses, while the outside party shifts identity by using individuals or shell companies as fronts. The mechanism involved is deception, rather than force. Also, value is transferred in the form of ordinary bank instruments, which in turn requires considerable attention to hiding the trail as those instruments are cashed and the proceeds move through the financial system. Although the operation has the appearance of a normal business transaction, that is merely a front – the transfer comes down to a purely predatory act.

When loans are made to outside parties, obviously collateral is required. It is at this point that a bank fraud may interact with other predatory crimes. Something like a mortgage fraud may require faked personal data like tax slips to confirm the individual's capacity to service the loan. If what is involved is commercial credit, collateral can vary. It might take the form of receivables, supposedly backed up by a verification of the books of the company. In one notorious fraud against a bank, an insider permitted loans approved to an outside accomplice to be the collateral for further loans!

One of the most popular scams is the use of stolen or counterfeit securities, particularly blue chip stocks and high quality corporate bonds, as collateral. The advantage here is that, because the securities are merely pledged as collateral, rather than sold or cashed, a bank or other financial institution will not necessarily check serial numbers against a hot list or otherwise confirm their veracity. Some of the cleverest frauds have been conducted in this way.

The biggest personal loan fraud in Canadian banking history was the work of a wealthy, respectable London, Ontario lawyer, Julius Melnitzer. When he left the board of Vanguard Trust, a small firm with which his law firm had been dealing, he just happened to take a copy of the corporate seal that Vanguard had used, among other purposes, to attest to the validity of certain forms which it issued lieu of custom-designed share certificates. Melnitzer's first trick was to create fake shares by simply typing in the share amounts and stamping the certificates with the company seal. He created five certificates representing a total of almost 900,000 shares. Then he used these "shares" as collateral for personal lines of credit. He also forged financial statements of a company that his father had founded, in which Melnitzer owned 20% of the shares, along with a pledge from the company that it would guarantee Melnitzer's debts. Using the Vanguard shares and the phoney loan guarantees Melnitzer received a total of $5.6 million in lines of credit from five major Canadian banks. The scam went on for years. Each time a bank would start to press him for repayment, he would threaten to take his business elsewhere. He would also request a letter of recommendation from one bank, then use it to obtain funds from its competitors. A few years later, the banks pressed him to either pay up or come up with better collateral. Emboldened by the fact that no one had questioned the veracity of the forged documents, he decided to do the second.

Melnitzer went to a small local printing company that his law firm had done business with for years. He told them he was representing a client charged with using forged stock certificates to get loans at banks. He wanted to prove in court that printing technology had improved so much, even a small shop like theirs could do a credible job. When the company agreed, he ordered single shares of five blue-chip companies in the name of his daughter to avoid suspicion. He then altered them to put in his own name and bumped up the amounts until they had a face value of about $30 million. Not only did the great majority of the financial institutions he dealt with accept these in the place of the initial collateral, but some even significantly increased his line of credit. Alas, when an officer at National became suspicious about how Melnitzer's personal wealth had risen so quickly, the officer asked bank experts to inspect the stock certificates. Melnitzer was arrested three days later.

While some of the cleverest of bank frauds have used fake paper, so too some of the stupidest. In February of this year, the CIBC reported an attempt to use as collateral for letters of credit no less than US $25 billion (!) in USA government bearer bonds – just the sort of thing someone walks into a bank with every day! The bonds bore the likeness of President Grover Cleveland, whose administration never issued bearer bonds; yet some were signed by the Secretary of the Treasury in the Reagan Administration. Bonds supposedly issued in 1934 mentioned the address of a USA Treasury office in Washington, complete with a zip code, an innovation introduced in 1963. The bonds were purportedly worth $100 million each, a denomination which the USA has never issued. And the $25 billion total would have represented about 80% of the total USA public debt in the year they were supposedly printed.[4]

In terms of the typology, bank fraud fits the predatory more than the commercial category. It involves deliberate falsification of collateral or other documents with the intent to extract money from a business institution with no intention to repay. Although the main mechanism is fraud, it involves a non-business or fake business front. And although the transfers are made

[4] See www.publicdebt.treas.gov/cc/ccphony3.htm for an examination of some of the fake USA securities currently on offer. On the CIBC fraud attempt, *Canadian Press* 15/2/01.

through normal bank instruments, at heart they involve a redistribution of wealth through a once-and-for-all or episodic deception more than a redistribution of income through manipulation of the terms of normal business dealings.

It is interesting to compare such events to the classic "bank robbery," which also fits the predatory category. In a bank robbery, the event is always once-and-for-all. Although that does not preclude the same bank being hit by the same gang more than once, each incident will be distinct. Insiders may provide information and even covert assistance, but the bulk of the organization takes place outside. No matter how complex that external organization, the procedure boils down to a simple, unilateral and involuntary transfer and, although other things may be taken, the primary target is cash, the secondary one other bearer instruments or valuables like gold if the safety deposit boxes are also hit.

3.3 Counterfeit Currency

Counterfeiting is regarded as an especially serious offence. It strikes at the heart of the political and economic system. Those who fake money are, in effect, challenging one of the most important perquisites of sovereignty, and therefore the foundations of the state itself. Furthermore, anything that seriously destabilizes the currency can threaten national prosperity. It is precisely for this reason that, when states engage in economic warfare with each other, one popular trick has long been to counterfeit each other's currency.[5]

Counterfeiting, not as a tool of covert statecraft, but merely as a means of making illegal money, in both senses of the term, has a long history, probably as long as money itself. Since paper became the principle medium of exchange in the West, counterfeiting has gone through roughly distinct three stages, each dictated by the state of technology. Indeed, there is probably no other economic crime so conditioned by technological change as currency counterfeiting. The technology almost by itself can determine whether the act is carried out en masse by underground groups who then have complex logistical problems in getting it into circulation, or by opportunists who knock off a few specimens and directly use them.

Throughout most of the 19th Century, when individual banks printed their own currency notes, counterfeiting was largely entrepreneurial in nature. A crime of opportunity, it attracted every species of artisan from professional printers to snake-oil salesmen. The lithographic printing techniques were inexpensive and relatively easy to use (though obviously a more skilled printer produced a better product), security measures were simple to break, and distribution was no great problem. The batches of notes tended to be small, and in some cases, counterfeiting was so endemic, merchants actually preferred good counterfeits of the notes of sound and well-known banks to real notes issued by small and relatively unknown banks – the fakes were easier to pass!

When governments took over a monopoly of the business of printing paper money, the counterfeiting craft shifted. The uniformity of national currencies was itself an impediment to opportunistic incidents. The more familiar the populace was with the notes, the harder to pass fakes; and the better (and therefore more time-consuming and expensive) any successful fakes had to be. Governments also introduced more sophisticated security measures. And, because

[5] Some of these incidents are discussed in R. T. Naylor, *Patriots and Profiteers: On Economic Warfare, Embargo Busting and State-Sponsored Crime*, Toronto: McClelland & Steward, 1999.

counterfeiting now threatened the financial integrity of countries, rather than just of this or that financial institution, the effort put into detection was much enhanced.

The result was very high capital costs to counterfeiters. Consequently, they required long print runs to cover those costs. Furthermore, the skills required to mimic official notes were difficult to find. Techniques for passing large batches of newly minted paper had to be more sophisticated, usually more long-distance in nature, to evade detection. Therefore, although traditional "organized crime" groups tended to avoid counterfeiting because of both the high risk of detection and visibility involved, success in counterfeiting usually required the efforts of groups with the capital, skills, and connections to pass the product. That remained generally true until the 1980s.

During the last two decades, with the spread of new digital print technologies, counterfeiting has again shifted. Although the quality of the end-product is highly variable, the use of scanners, colour printers, and colour copiers mean that counterfeiting is once more a crime of opportunity. Of course, sophisticated groups still do get involved from time to time. As before, they use expensive equipment to simulate intaglio printing, and employ long-distance wholesale distribution networks to move large batches of bills away from the point of production. But more and more instances of counterfeiting are the work of amateurs who print small sums using easy-to-access technology, and directly distribute them into retail trade. So far, although not enough to threaten the integrity of national currencies, at least of the major countries, opportunistic counterfeiting is sufficient of a problem to force governments to engage in an ever-more expensive technological arms race against counterfeiters.

In Canada today, most fake money is produced by colour copier. As in the USA, the main target is the $20 bill, because it is the most common in circulation. The technology is easy to use, and the product of reasonably good quality. However, the machinery is not cheap. Moreover, as a security measure, there is a deal with the RCMP to report all sales as well as suspicious supply or service calls. Furthermore, any standard service call will likely turn up evidence of any illegal use. And some copies leave a nearly invisible code as a tracing measure. For these reasons some people rent or steal the machines, or break into offices and do the job at night.

Granted there are excellent security features on bills – the optical security device that refracts light from different angles in different colours; planchettes scattered throughout the bill at the point when the paper is produced; intaglio printing; portraits laden with fine details; different coloured bills; multidirectional fine line patterns; special paper; serial numbers; etc. Unfortunately, most of these features are useless in keeping fake notes out of immediate circulation – what sales clerk in a busy store stops to hold a bill up to the light to see how the colour is refracted? – and worst, all can be duplicated with time and effort. Increasingly, these features can be mimicked by the best quality copiers, or, in the case of serial numbers, by linking a computer with a generated list to a copier. There is even a computer paper commercially available that simulates the look and feel of the real stuff. As to intaglio printing, not only can it be mimicked on fakes, but it wears down on the real stuff. New security features are constantly being introduced, but the estimate today is that on average it takes three months for someone to copy them.

Because today most successful counterfeiters are opportunists, the bills get passed in small numbers over extended periods and therefore tend to circulate widely before ending up in a

financial institution where there is some reasonable (but by no means assured) chance they will be detected by the teller. Therefore, detected amounts are likely a poor estimate of total sums. Hence, it is difficult to wholly accept RCMP claims that counterfeit accounts for less than one note in 5000 or that the cost of counterfeiting is $4 million compared to $32 billion in

Table 9: Seizure Statistics Canadian Fake Currency

YEAR	Number Passed	Growth	Value	Growth
1994	79, 182		$2, 012, 611	
1995	49, 413	-37.60%	$1, 045, 510	-48.05%
1996	70, 886	43.46%	$1, 417, 092	35.54%
1997	95, 464	34.67%	$2, 713, 514	91.48%
1998	122, 015	27.81%	$5, 181, 932	90.97%

currency.[6] This is especially true given that the $20 bill, which dominates day to day circulation, will also be the one detected most frequently, whereas the $100 bill, which tends to stay in hoards, is obviously both more profitable and less risky to fake.

True, with opportunistic counterfeiting, fewer notes are printed with each incident, but the numbers of incidents are much greater, and a point often overlooked, because the notes are retailed directly, the returns are much higher per unit – large job lots are usually sold off by first stage producers at as little as 10% whereas an opportunist might well net the full 100%.

In any event, the real cost of counterfeiting is not a few millions in illicit income, but the potential damage it does by spreading fear about the state of the currency and the security costs the threat imposes on businesses and government alike.

In Canada, the problem applies not just to its own currency. Since the 19th Century, when many USA counterfeiters set up plant in Ontario and Quebec near the border, Canada has been one of the principal foreign venues for making fake USA bills. In one recent case, Joseph Badghassarian worked with an offset printing press, rather than a colour copier, to simulate intaglio printing. He made his own high-quality printing plates by "burning" the negatives of pictures of USA $100 bills onto metal plates using a high density light, the most difficult and important step. He then broke the printing process into 12 stages – the contours, the presidential portrait, the serial numbers, etc. – and the entire process was repeated to add relief to the paper. The result, the authorities said, was bills of exceptional quality.

Badghassarian was an independent craftsman, not a member of some "organized crime" ring. Rather he was paid a fixed fee for service by the gang who then sold the notes, wholesale, for $12 per $100 bill to other "organizations." These, in turn, further distributed it to different cities across the continent. As with a drug chain, the unit price rises and the quantity per job lot falls at each step. Finally came the retail distribution. When the fakes were employed, for example,

[6] *Globe and Mail* September 29, 2000.

to purchase goods, sometimes inexpensive items were bought so as to receive change in real money.

There are elements of at least two crime categories in counterfeiting, that, like so many other criminal activities popularly summarized in a word or simple phrase, are actually a complex of actions. There is intellectual property crime – imitating objects of value whose "patent," so to speak, rests with the government. There is market-based crime when gangs sell batches of counterfeit to one another prior to them being distributed to the retail trade. There is, once more, predatory crime when merchants are stuck with fake money accepted in payment for merchandise. There might even be an underground commercial crime when people selling banned or stolen goods find themselves paid off by customers with the same moral standards. There is also another predatory element with respect to government, for fake currency displaces real currency, and therefore pre-empts, though in most countries only to a very marginal degree, the capacity of the government to circulate its own currency and collect the de facto *seigneurage*. And there are additional security costs governments must swallow to defend the currency.[7]

On balance, though, this crime fits best into the predatory category. There are clear victims. Transfers of wealth occur ultimately by deception. Transfers are effected from victim to beneficiary primarily in legitimate cash or goods. There is rarely the need for a business context, even as a front, while only at the wholesale level is there any underground network of transfers involved.

3.4 Loan-Sharking

In Canada, loan-sharking is officially designated as a criminal offence if the effective rate (including fees and penalty payments) exceeds 60% per annum. This offence was created during the 1970s, some say, out of a widespread and inflated fear of the mob.

Problems in the analysis of loan-sharking begin with actually defining the trade.[8] After all, pawnshops in major cities routinely charge 20% per month or more, far above the legal limit. However, police who visit them look only for stolen goods; they only infrequently query the rates. It seems that loan-sharking is seen, in the eyes of law enforcement (as distinct from in the eyes of the law), not as a problem per se but only as a problem when carried on by a certain type of individual in a certain milieu (i.e., the notion that it is an important source of income to "organized crime"). This type of confusion of acts with actors typifies much of the treatment of profit-driven offences.

Two things distinguish loan-sharking from ordinary finance. One is extraordinarily high interest rates. This seems to make it fall into the commercial category – it is a legal service (i.e.,

[7] Bank of Canada, , "Bank of Canada to issue new bank notes" *Press Release* September 26, 2002.

[8] The information comes from a number of sources - a scan of some academic literature, press coverage, detailed interviews conducted by students with police officers and practicing loan sharks, and recollections of a former gambling addict about his own experiences as a client.

lending money) delivered by illegal means; it involves market-type exchange but on "unfair" terms, because the terms of trade are twisted by asymmetries of power; and it leads to redistribution of existing (rather than creation of new) income.[9]

On the other hand, the second characteristic is the unique nature of the collateral – *in extremis*, the borrower's own person, or so the popular theory goes. A business reputedly marked by intimidation and violence would appear little different from extortion. That would suggest it should be seen as a predatory offence falling into the grey area between legitimate business and criminal activity more typical of commercial crimes.

However, if it turned out that intimidation was the exception, that clients overwhelmingly enter voluntary contracts with loan sharks with full knowledge of the terms and consequences, then arguably it should be categorized as a market-based offence. It would involve trading among willing participants of a commodity or service in defiance of regulations restricting the terms. Only an close empirical analysis can settle the question.

According to a popular view, for which the evidence is restricted to a few sensational mob stories, during the 1930s, mobsters who grew rich during Prohibition used usurious loans as a device for infiltrating and eventually taking over legitimate businesses strapped for cash in the Depression-induced credit crunch. That story has set the tone for most subsequent discussions of the loan-sharking phenomenon in the USA and abroad. Thus, during the 1970s there was much political, press, and police attention, mainly in Quebec, but also elsewhere in Canada, to the phenomenon, even though anecdotal evidence suggests that most loan-sharking was linked to illegal gambling. Even as late as the mid-1980s, the USA Presidential Commission on Organized Crime insisted that loan-sharking was the second most important source of criminal earnings; the most important being labour racketeering. However, by the end of the decade in both countries, drugs had definitively displaced things like loan-sharking and illicit gambling as the major concern. The result is that today loan-sharking seems largely, although not entirely, forgotten. Some police officers interviewed recently insisted there was no such thing as loan-sharking. On the other hand, a police veteran, who dealt extensively with this offence during his career, insists the problem is still rampant. In a sense, both are right.

The old view was that the loan-sharking business was organized hierarchically. The process started with a mob boss who regulated the terms, arbitrated disputes, controlled the use of violence, and taxed the profits. Sometimes, too, the mob boss would put up some or most of the capital, lending to mob members or associates. (In fact, in some cases, allegedly, those occupying a lower position in the mob pecking order would borrow from the boss, not because they needed the money, but because their debt helped to confirm the patron-client relationship.) The members or associates, in turn, would lend to retail loan sharks, most of whom would be independent of the immediate "family." Then the retail loan shark would use one further intermediary stage in the form of a "steerer" or "finder" - a cab driver, nightclub doorman, bartender, etc. - who would, for a fee, search out customers. This process permitted the "banker" at the top to keep several layers of insulation between himself and the street action.

[9] In general see Lawrence Kaplan & Salvatore Matteis, "The Economics of Loan-Sharking" *American Journal of Economics and Sociology*, No. 3, July 1968; Agust Bequai, *Organized Crime: the Fifth Estate*, Lexington: 1979; New York State Commission of Investigations, "Loan Shark Racket" in Alan Block (ed.) Westview: Boulder Colorado 1991. Herbert Edelhertz and Thomas Overcast, (eds.) *The Business of Organized Crime*, California, Palmer press 1993.

There may have been some truth to the stereotype once upon a time in a few places, particularly New York City. But in the last two or three decades, a number of institutional developments have intervened. Most countries have loosened their interest rate regulations to permit financial institutions to charge higher rates, therefore capturing part of the loan sharks' former clientele. And the remaining business seems to have been democratized. Perhaps in some cases career criminals linked to "organizations" can be still found in the business – there is no reason why not. They, in turn, might still hire muscle to keep accounts up to date. But they certainly do not "control" the business, and probably never did. Along with democratization of the entrepreneurial profile has come a diversification of both sources of funds and types of customers.

Some funds did and perhaps still do come from the profits from other cash-rich rackets like drugs or gambling. There are stories, hard to substantiate, of lottery winners using their gains to fund loan-sharking, turning tax-exempt winnings into tax-free, income-earning assets. Some could come from perfectly legal businesses owned either by underworld figures or by legitimate businessmen seeking the higher rate of (tax-free) return that putting their money out into the "street" can yield.[10] When large sums are involved, the origins might be institutional. A bank, for instance, might unwittingly make a loan to an apparently legitimate customer, only to have the funds diverted into loan-sharking. There have even been instances when an officer of the bank is an active participant, bribed or coerced into either lending to the loan shark or directly to one of the loan shark's customer who would not command the credit rating to obtain a bank loan legitimately. However, the very nature of the loan-sharking business, to the extent it is successful, should make the entrepreneur quickly independent of outside financing. This also suggests that the more profitable the business, the *less* the need for any mob affiliation.

Customers fall into two main classes. Some borrow for purposes of consumption and some for production. The lowest end of the loan shark spectrum handles ordinary citizens, those on welfare or unskilled blue-collar workers, with irregular incomes, or occasionally, exceptional credit needs, to finance consumption of legal goods and services. Reputedly there are sharks who go door to door in low income neighbourhoods searching for the elderly or welfare recipients badly in need.

More lucrative, it seems, is lending to consumers of illegal goods and services. Gamblers are regular targets, with the loan-sharking done by associates of the same group who run an illicit or rigged gambling operation. Even where gambling is legalized, sharks hang around the casinos, encouraged, in places where casinos are privately owned and run, by the owners to ensure that their lower end or higher risk customers (i.e., those not accommodated directly by the casino) are kept supplied with funds. Similarly vulnerable are clients of drug dealers; some of the latter directly lend to their customers and might well profit more from the lending than the trafficking end of the business.

However, there is another sector, whose relative importance *may* have grown of late. This is the demand for loans from entrepreneurs who either cannot borrow from the formal banking system or would find it risky to do so. Entrepreneurs selling inherently illegal goods may have

[10] One early and notorious instance, in Toronto during the 1960s and early 1970s, involved a jeweler who specialized in diamonds. When legitimate ones came in, he sold them, but delayed paying the invoices as long as possible, and in the interim, put the money out into loans. And when thieves offered him stolen diamonds to fence, he pledged them as collateral to other criminals or to greedy local businessmen, for money that he would use either for loan-sharking or for speculating on the Antwerp diamond exchange. (James Dubro, *Mob Rule: Inside the Canadian Mafia*, Toronto: Totem, 1985, 57-8.)

no other source of start-up money or working capital. Hence loan-sharking may be necessary as an input for market-based crimes. But informal sector entrepreneurs, those selling legal goods and services in illegal ways, might also have this need. The sweatshop boom in some major North American and European cities would likely have been impossible without the services of loan sharks.

There are also some who could borrow legally, but prefer on occasion to use loan sharks for their speed, "informality", and especially their secrecy. Then there are those who appear completely legitimate, but have overextended their credit lines from formal institutions and hence have no recourse but to "alternative" financing methods.

In all of these cases, the contract is purely voluntary. There may also be those who think they are borrowing legitimately, then, when the conventional financing they have been promised fails to arrive at a critical time, find themselves offered a "bridging loan" at usurious rates, but this appears exceptional.

There are two distinct ways in which loan-sharking can be profitable. The first, undoubtedly the most common, is directly through the high rates of interest, provided they adequately compensate for risk. The second is indirect, through the profits from securing control over a defaulting debtor and/or their business. However, even in this second case, it is important to distinguish in practice between takeovers of businesses that occur because that was the intent of the loan-sharking operation (i.e., the old stereotype about a mob-controlled transaction), and those that were the inadvertent consequence of an unpredicted inability of the borrower to repay. After all, if money is earning 5-10% per week in the street (allegedly gambling loans can carry 40-50%), there would seem little incentive for a shark to wish to take over a *dépanneur*, sweatshop, or neighbourhood restaurant with a long history of municipal fines for insalubrious conditions. It is precisely this type of businesses which is most likely in debt to a shark.

Indirect profits can also be obtained if customers are coerced into criminal acts – on the waterfront or in trucking firms, longshoremen and teamsters reputedly repay by assisting in the hijacking of cargoes. The same holds true when defaulting businessmen are forced to use their businesses to provide cover or support for criminal activity – an operating site for other rackets, or putting mobsters on the payroll to give them an apparently legitimate source of income. All these undoubtedly have existed. How extensive or representative they are of the loan-sharking business in Canada today, even in Montreal, the historical centre for concern, is open to considerable doubt. (See Appendix III.)

In terms of the two salient characteristics of loan-sharking, the first being extremely high rates in relation to market norms is certainly true – although whether the rates are really so high in relation to risk, no one can say a priori.

As to the second, the use of violence or its threat to ensure repayment, it makes the trade approximate a predatory practice like extortion. In reality actual violence seems rare – even criminals who borrow generally repay, for they never know when they might need the services of the loan shark again. Indeed the stereotypical view may exaggerate even the prevalence of threats, explicit or implicit. Most anecdotal evidence seems to suggest that underground pledges of property are often the collateral, and where none exists, fears of a bad credit rating in the underground economy, or the reputation for having breached a trust, can be sufficient to guarantee payment. To the very limited extent violence or the threat thereof is used, it rarely reaches extreme forms, unless someone clearly had the means to pay and deliberately flaunts

their "dead-beat" status. However, there do seem to be more examples of incidents where the violence is against property – arson might be used to assure, through the resulting insurance money, that a borrower can repay.

On balance, loan-sharking seems more likely to fit the market-based than the predatory or commercial categories. It operates in violation of regulations, using underground networks, with payments in cash, and on the basis largely of free-market exchange. Yet it is a curious kind of offence in which the borders between sharp business practice and actual crime are hazy, where there are constantly changing norms and institutions, where concern over the phenomenon flourishes and fades for reasons that are unclear, and where the matter might best be treated strictly as a regulatory (and fiscal) rather than criminal code concern. Only in the event that violence or its threat are used does there seem a clear case for the traditional criminal justice system to take much heed, and there are plenty of statutes under which to proceed against the perpetrator of those acts without having to use the arbitrary and arcane offence of usury.

3.5 CFC Smuggling

This crime grew out of Canada's adherence to the 1987 Montreal Protocol, the most comprehensive multinational environmental convention ever signed, to phase out the production and use of ozone-layer depleting CFCs and similar chemicals used particularly in refrigerants and automobile air conditioners. The Protocol called for wealthy industrial countries to implement a rapid phase-out, while developing countries were permitted to actually increase their production and use for a time, before also beginning a programmed elimination. As a result Canada agreed that, after January 1st, 1996, its supply of new CFCs would cease, and that subsequently the only domestic lawful supply would come from reclaimed and recycled sources. It passed an amendment to its Environment Protection Act by which unauthorized imports of CFCs would be a strict liability offence with penal consequences.

In Canada to date there seems to have been only one case – *R.* v. *Haas* in the Alberta Provincial Court Criminal Division in 1993. The accused were found to have crossed the border with CFCs in full knowledge of applicable law pertaining to the chemicals – they were, after all, in the refrigeration business. The court also ruled that the defendants had been unable to prove due diligence, qualifying them for a guilty verdict under strict liability. However, because of uncertainty over the description of the goods, their location and condition, the accused were acquitted.

While Canada introduced a phased withdrawal and import ban, the U.S.A. introduced an import duty, an excise tax at the point of first sale that rises every year which also applies to recycled material, restrictions on the uses to which imports could be put, and a floor tax on existing stocks, all combined with a ban on further domestic production. The result was a six-fold increase in domestic price. The result, as well, was to produce a burgeoning black market – one estimate puts it at 30,000 tons a year at its peak – that some suggest threatened the very foundations of the Montreal Protocol. Granted the problem is self-limiting – no automobile built after 1994 uses CFCs in its air conditioning system and there are substitutes which are actually cheaper for other refrigerant uses. Nonetheless, there is still an enormous number of used cars in the USA; they are often exported to other countries; and the ozone problem is so urgent any continued CFC use is worrisome.

The key to the black market is the price gap – in the USA illegal CFCs sell for $25 an ounce while the cost of production in developing countries (legal under the Montreal Protocol) is about $1.00. CFCs are a colourless, odourless gas, making detection difficult. And cover for illegal imports is provided by the existence of a residual legal import quota, for essentials like inhalers, for re-export to places where their use continues to be legal under the Protocol, and for industrial feedstock inside the USA provided they are destroyed in the process.

The techniques for violation are the obvious ones: claim the material is part of that permitted for essentials; bribe Customs inspectors; smuggle via Mexico using any of the thousands of trucks rolling across the border; hide the gas cylinders inside other, larger cylinders with benign markings; interchange containers in ports; mislabel the material as similar but legal chemicals (e.g., propane or HCFCs); add nitrogen to raise the pressure and mimic HCFC on the test instruments; or adulterate with a touch of water vapour and pass them off as "recycled."

From point of production to final sale inside North America, the black market CFCs are marketed through an underground network that is embedded inside the legal business structure. It runs from developing country manufacturer to international chemical broker to legal exporter to smuggler to illegal importer to legal distributor to retailer. That last link in the chain is often a service station owner or an auto parts shopkeeper who might not even be aware of the illegal origins of the product.

CFC trafficking in both Canada and the USA falls into the category of market-based crimes – a restricted and/or banned good is imported with intent to make use of it or to sell it with full knowledge that it is prohibited. True, in some respects, the offence seems to fit the commercial category – it appears to occur in a normal business context, and most transactions are settled in normal banking instruments. Nonetheless, it is an offence in which there is no force or fraud, except with respect to false customs declaration, and transfers take place on a strictly volitional basis. Furthermore, as with things like illicit jewellery sales evading the excise tax, the distinction between underground network and legitimate business context is not really important – they are one and the same.

3.6 Trafficking in Bear Gall Bladders

The main factor driving this crime is the growth of Traditional Chinese Medicine (TCM). Bears are the only significant mammal producers of ursodeoxycholic acid used (and of proven efficacy) for treating a wide range of ailments. In addition, bear paw is regarded in the Orient as a delicacy and an aphrodisiac. As the numbers and wealth of potential consumers soars (TCM is also the basis of local medical practice across much of Asia outside of China), the world's bear population, perhaps a million, cannot support it. With the Asian black bear hunted to near extinction, pressure is growing on North American species.[11]

Poaching of bears in Canada takes place in and through a jurisdictional maze. Each province regulates its own wildlife – some ban bear hunting and trading in parts; others permit hunting, but not trading in parts; others permit both under restriction. The federal government also has rules for trade in wildlife outside of a province. Then there are international treaties,

[11] Information was collected for this projects by selected students from newspapers, trade journals, pro- and anti-hunting publications, and interviews with many conservation and law enforcement officials in the USA and Canada.

specifically the Convention on International Trade in Endangered Species (CITES), which lists North American bears as an Article II species, not endangered but potentially so and therefore tradable only with a CITES permit. This jumble of often contradictory regulations and laws provides an excellent means for those intent on violation to find a way of falling through the cracks.

The chain begins with hunting. It is legal with strict quantity limits in most provinces. Hunters' attitudes towards animal parts vary – some regard it as an insult to the dead animal to rip off paws and tear out gall bladders; others use them to finance an expensive hobby, usually turning them over to outfitters; while others use them to tip their guides. Poachers are different. Unlike legal hunters, who almost exclusively target mature males, poachers target all of the population because, alas for bears, the size of their gall bladders bears no relationship to their age or sex – rather it reflects such factors as diet. Typically, poachers target bears in the spring, when they are hungry and sluggish from hibernation, and they attract the bears with food-baited traps. Poachers are typically paid in cash.

The gall bladders are collected by outfitters or passed on directly by hunters to middlemen who in turn sell them to travelling wholesalers, again usually for cash. Typically the transaction will occur in a bar or hotel room in some small town near the wilderness where wildlife officials are few, and local law enforcement officers are likely to be fairly sympathetic towards hunters generally. Then the wholesalers might take the galls to a big city – Toronto and Vancouver are the main staging points. They are turned over directly to Chinese pharmacies for local sale (quite openly) or to brokers who arrange their transportation out of the country. If the sale is to a local pharmacy, payments might be in the form of bank instruments, albeit with their purpose disguised by invoice fraud. If bound abroad, the bladders, usually dried, are consigned singly or in small lots to couriers who are usually members of extended families. Occasionally they go in large shipments, intermingled with legal parts and ostensibly covered by the same documents – hunters' license number, CITES certificates, export permits, etc. At that point the trade might well be covered by a standard bank letter of credit.

Laundering is commonplace. Some provinces and states permit hunting but ban the trade in parts. In that case the bladders are simply driven to a state or province that does allow legal trade and registered there in the name of people who hold bona fide hunters' licenses. One trick apparently common in Quebec is to extract the bile from several small bladders and inject it into a larger one, then export it with a single permit.

Even where it is legal to hunt and export parts, there is a parallel illegal trade that is driven by the desire to avoid taxes and duties, the nuisance of filling out forms and obtaining permits, the search for top quality bladders that may be obtainable only out of season or from animals in protected areas, or, not least, by the need to witness the hunt to reduce the chances of being conned.

When the bladders are sold, there is fakery aplenty in the trade – which is one reason why buyers in the Orient sometimes insist on sending their own hunters or else demanding parts be accompanied by videotapes showing the bladders being removed. For some reason bile from larger gall bladders is considered more desirable, and therefore fetches a higher price per gram, than from smaller. As a result, traffickers inject gall bladders with plastic beads and lead weights. Colour of the bile also matters, with obvious consequences. Sometimes pig bile is mixed with bear, or, alternatively, small amounts of genuine bear bile injected into pig gall

bladders. It is difficult, without every expensive test, to differentiate pig and cow from bear bladders if the size is about right.

There are frequent statements from sources as varied as Interpol and anti-hunting activists that the traffic yields huge sums (that overall world illegal trade in wildlife is second only to drugs in profit is a frequent claim) and that "organized crime" is heavily involved. But the truth is much more banal. There are no gall bladder barons tracing their shipments by computer. From time to time a big operator is exposed. But for the most part the hunting is opportunistic, exchanges take place mainly through extended family networks, there is little relationship (barring a few well publicized exceptions) to other forms of contraband, and the returns are not particularly high. Nonetheless, it is wrong to minimize the ecological damage or the moral seriousness of the traffic for these reasons. And the anti-lobby has a strong point when they insist that disparity of legislation combined with confusion about whether to regulate or ban is worse than doing nothing at all. It has been proven time after time in the wildlife trade that regulated trade simply provides the perfect excuse for those involved in the black market. Blanket prohibitions should be used more frequently.

In terms of the typology, trade in bear gall bladders is another of those offences that falls into all three categories. Poaching to obtain the animal or parts is clearly predatory – an act of theft, in effect, from the Crown which holds title to wildlife on public lands. Trading poached animals or their parts falls neatly into the market-based crime category. They are smuggled out by hiding in luggage or commercial cargo, by using faked paperwork, or by mixing of loads of legally and illegally exported. At the consumer end, there is a great deal of adulteration and misrepresentation, an obvious case of commercial crime. However, the market is demand-driven, and the product is either restricted or banned, by provincial, national, or international regulations, sometimes all of them. Poaching is done in the full expectation there will be a ready sale – it is most commonly done to order. Consumers, even when conned, are largely aware that the traffic is illegal. Hence the classification of market-based crime seems to fit best.

3.7 Fraudulent Bankruptcy

The white collar equivalent of a bank heist is probably a bankruptcy scam. Put in the simplest terms, the following steps occur:

1) An entrepreneur creates, or better, takes control of a company, preferably one with a solid credit rating.
2) He/she begins on credit to build up inventory, initially relying mainly on suppliers' credits.
3) At first business appears to run normally, sufficiently so that, in addition to increasing amounts of suppliers' credits, the entrepreneur may qualify for a bank loan.
4) He/she quickly runs up inventory.
5) He/she diverts inventory to cash sales on the black market, hides the money, and then declares bankruptcy, sticking the suppliers and/or bank with the loss.

Obviously there are countless subvariants, some of considerable complexity, but they all contain within them the core concepts of building creditor confidence and secretly stripping

assets before letting the company collapse. These scams are very difficult to prosecute, particularly if the stripped assets have been well hidden and the scam artist does not give away the game by ostentatious living. In common with most forms of commercial crime, it is hard in practice to pinpoint just where bad business judgement ends and deliberate fraud begins.

Professional bankruptcy artists have a harder time today than in recent decades. Credit checks tend to be tighter, particularly if the applicant has a previous history of bankruptcy; more effort goes into tracing and reversing fraudulent conveyances; and accountants tend to have higher standards, because they are increasingly being held liable for the consequences of sloppy audits. That problem of tighter bank credit checks meant that when the two entrepreneurs responsible for the Premium Sales debacle, who had a history of dubious bankruptcy and scrapes with regulators, went looking for capital for their commodity arbitrage business (in this case dealing in grocery and beauty products), they had to turn to private investors.[12]

Although the term *arbitrage* is mostly employed with respect to financial or primary commodity transactions, it is also present in markets dealing with standardized consumer goods. Those working the trade seek out excess inventory in one area and divert it to another. (That is why it is also sometimes called *diverting*.) The profits per unit are small, but the volumes can be enormous.

Generally manufacturers of processed food items or non-prescription health and beauty products sell at different wholesale prices in different areas. But they usually attempt to avoid dealing with arbitrage houses (i.e., *diverters*) in favour of selling directly to final distributors. However that is not always the case. A regional distributor for a large brand- name manufacture might have an excess of inventory – a small part gets placed with local retailers and the rest sold off to an arbitrage house. Even when manufacturers attempt to make it a policy to avoid "arbs", there are ways of ensuring supply. A diverter might, for example, get some grocery wholesaler or a small retail chain to act as a front, deliberately overbuying, then reselling to the diverter. The grocer gets product at the same privileged rate as a larger one would, earns a small mark-up on the diverted excess, and might even benefit from the cash discount producers offer to buyers who pay on time; the diverter gets a supply of brand-name product that can be either directly arbitraged into another market ("flipping") where there is a temporary shortfall and therefore above-average prices, or stockpiled ("warehousing") pending market changes. In short, the milieu is already grey – producers practice price discrimination while diverters act through business fronts to disguise the purpose of large-scale purchases.[13]

The key is to always have a ready supply of cash to move quickly to take advantage of market imbalances and price fluctuations. Take the Premium Sales Scandal: Cash was bound to be a problem for the two gentlemen with dubious business histories because no major bank would touch them. In the final analysis, all the funds but those from a small credit line, from a Florida bank whose officers were suspected of complicity, came from well-to-do private investors, mostly from Montreal or Florida.

The process began with a group of friends and associates of the two schemers. They would each set out to solicit groups of private investors to join partnerships, ultimately 21 of them, on the

[12] Information on the case comes from press reports, the receiver's report and correspondence and interviews conducted by selected McGill students with investors who were stung. The rise and fall of Premium was detailed by William Marsden in a series of *Montreal Gazette* articles in June, 1993. See also *National Law Review* April 18, 1994, May 5, 1994.

[13] *Forbes* May 5, 1993.

promise of returns up to 60%. (There were also a number of persons enticed into financing particular transactions, but they accounted for only 5% of the total money raised.) Very large volume, the fund-raisers claimed, permitted the exceptionally high rate of return. The pitch was successful because:

- many fund-raisers also invested;
- the fund-raisers relied on personal and business contacts for solicitation;
- investors were given fabricated monthly reports attesting to transactions;
- the firm boasted at peak $2 billion in annual sales and assets of $500 million, when in fact annual trades were never more than $300 million and assets $100 million;
- investors in Florida or on holiday could visit the facilities to see warehouses packed with goods and trucks constantly coming and going;
- early investors were actually paid very high "returns" – out of money being put in by new investors.

Ultimately a pool of nearly $500 million in investable funds was accumulated. Yet even the most cursory investigation into the diverting business would have shown that no amount of volume could have generated a 60% gross return in a business where (unlike arbitraging of financial instruments or primary commodities) operating costs for transportation, warehouses, computer systems, etc. are very heavy and margins are usually 2-3%. Costs were particularly high for Premium because of its practice of hiring friends and relatives of the two schemers at high salaries, and giving them corporate credit cards with unlimited credit, dream vacations, and luxury cars. Then, too, the probability of meeting the promised returns were slightly compromised by the weight of hundreds of millions of dollars that were siphoned off through a network of more than 200 bank accounts in 40 different institutions in places as varied as Switzerland, Israel, and Panama.

Yet Premium actually began as a legitimate diverting company. Investors were informed when a flip was about to occur. Premium would, from its Florida headquarters, fax the details. Investors would wire money to suppliers and receive payment back from purchasers. Premium at that stage received only a commission for arranging the flip and shipping the goods.

Then, as the business got better entrenched, the investors were instructed to send the funds to the suppliers, Premium would ship merchandise to buyers, buyers would repay Premium, and Premium would pay the investors. That gave Premium temporary control of investors' funds on the return loop. Premium could then delay or divert the funds at will. At this stage, for the first time, some of the supposed deals did not exist. Trades were invented and bogus invoices created to lull the investors.

In the third stage, Premium requested the investors wire money to cover trades directly to Premium accounts, Premium shipped the goods, Premium received payment, and Premium then undertook to send money back to the investors. At this point Premium had full control of the flows of both goods and money. More of the trades were bogus, but investors were assured by phoning some fifteen "confirmers," some working directly for Premium and others bribed employees of wholesale distributors. Nonetheless, much of the business was genuine – Premium still bought and sold goods, and financial movements had to be linked to transactions, real or imaginary.

In the fourth stage the operation degenerated into pure fraud. For fully 90% of reported transactions, there were no suppliers. By that time no less than seven Premium employees were busy forging invoices which joined the daily faxes to investors. Confirmers became proactive, actually initiating calls to reassure investors, with sufficient success that some no longer required any confirmation. Some investor partnerships even gave Premium direct control over their partnership bank accounts. Furthermore, instead of repaying investors after each deal, Premium had arranged for them to accept payment on a fixed schedule, in effect converting a pool of commercial credit into a quasi-security. In the meantime a system of 25 shell companies, mainly in Puerto Rico, were busy posing as wholesale grocery firms, while in fact their main purpose was to divert the investors' funds offshore.

At least $250 million were lost – the total will never be known, because some investors were using funds they had stashed abroad in secret accounts to evade taxes and hence could never come forward to complain. But in the final analysis the law cannot be faulted. The FBI was already snooping around Premium before the collapse, and once the U.S. Securities and Exchange Commission caught wind of a potential problem – after an article in *Forbes* revealed the shady past of the two investors – it moved quickly to shut the operation down, quickly enough that the principals were almost all caught. Partly the problem was the sloppy performance of auditors and other professionals who caught the wave of enthusiasm and convinced investors the plan was solid. A cursory check of the diverting business would have revealed that the promised rates of return were simply impossible. But mainly the problem was the blindness of the investors themselves, dazzled by the prospect of such high returns. Indeed, that raises the central problem of how, in such cases, to determine the point where people who seek fantastic deals become victims not just of the venality of the apparently offending party, but of their own greed, something no law can hope to address or change.

3.8 Telemarketing Scams

No potential offence under the criminal code seems to occupy as grey an area as telemarketing scams. Probably with none is the border between sharp business practice and outright fraud so fuzzy. Indeed, the key in so many instances is precisely to straddle the line between legality and illegality. That is the only way they can combine profitability with longevity. In addition, there are almost always jurisdictional issues – telemarketing is usually inter-state, inter-provincial, or international because that reduces likelihood of a) people showing up at the place of business to complain, and b) law enforcement troubles from local authorities. Further muddying the waters, as the term *telemarketing* is popularly used, by police forces as well as the general public, it includes all manner of straight-forward cons that have nothing whatsoever to do with marketing. When the term is employed in such a promiscuous way, it really comes down to a crime of using the telephone to con people out of their money. In that sense it resembles the offence of wire and mail fraud. This may be handy in so far as it permits a prosecutor to convict on an additional charge. But, by diverting attention to a technological nicety, namely the tools used to commit the offence rather than the offence itself, it does tend to trivialize the real offence.

For purposes of this typology, all the telephone-mediated acts that simply con people out of their money or valuables with no pretence to actual sale of goods or services will be presumed standard predatory offences. These include things like the Free Travel Gift scheme. Someone phones to say to the victim, "You have won a $10,000 lottery but…" they have to pay a gift tax of

$2,000 to claim the prize. Once the victim pays, receives nothing, then calls the initiator to enquire, the victim is told he/she actually won $100,000, but gift tax is $8,000, and so forth. In fact more than 40% of incidents reported under the category telemarketing actually have nothing to do with sales. (See Appendix IV.)

Here the focus is on actual sales of goods and services that involve either outright lying or gross misrepresentation of either the product or the terms of sale. If a customer receives absolutely nothing, and that was the intent all along, it is moot as to whether the offence belongs in the predatory or commercial category. But where there is actual transfer of goods or services in exchange for negotiated payment, the appropriate category is clearly commercial. There is a victim, albeit that status is sometimes not as clear as in the predatory category; there is an apparently voluntary exchange of money for goods or services, but with the terms misrepresented; the transaction takes place through an apparently (and possibly truly) normal business context; and the transfers occur using normal bank instruments.

Typically a telemarketing scam starts with a small, cheaply leased office in a place some distance from the clients. In Canada, Montreal has been for some time the centre of action. While some specialize in fraudulent security sales, most of these operations migrated to Amsterdam back in the 1980s.[14] Nonetheless their methodologies are common to other forms of telemarketing. One group, known as *openers* make cold calls or accumulate client lists or even place ads in prestigious publications offering free investment advice or subscriptions to investment newsletters. Once the list is drawn up, the *closers* move in to sell the phoney stocks. Especially good targets are tax evaders and similar types who might have trouble complaining to the authorities when they are fleeced – on the other hand, bad targets are career criminals inclined to settle disputes with baseball bats or guns. Transactions are settled by wire transfer, check, or other forms of bank instruments.

When merchandise is involved, typically the companies set up as credit card merchants. This can be difficult. Banks are generally wise to telemarketing operations and fearful they might be left holding the bag. Therefore success requires a credible business front, especially one that seems to have a history of legitimate operation and a good sales turnover. While not essential, a credit card setup is very useful, because payments can be received and processed much more quickly. If the company cannot get a credit card account, it will probably employ a courier company to make the rounds of its customers to pick up checks. The least desirable is money orders, because the entrepreneurs never know when they will have to close shop in a hurry. On the other hand, money orders and checks have this signal advantage – complaints come straight to the telemarketing company, rather than the credit card company, making it easier to appease the client.

As with security scams, the process begins with openers who do cold calls or purchase "*sucker lists*" of "*loads*" or "*mooches*," people who have previously bought into scams, or filled out contest cards at shopping malls. Victims are often seniors, or people looking to strike it rich, though small and struggling businesses can often be targeted through office supply scams. Then come "*loaders*," experienced salespeople who make the sales (and subsequently handle complaints). A third layer consists of "*verifiers*" who double-check to confirm the sale, finish convincing the buyer, ensure the merchandise has not been so overrepresented as to lead to legal difficulties that a sharp lawyer cannot deflect, and to verify credit card information. This

[14] This is recounted in Diane Francis, *Contre-Preneurs*, Toronto: Scorpio, 1988.

step, however, is only used by companies who are in for the long-haul – the "grab-and-run" types do not bother with this precaution. On occasion, with the long-haul companies, there are also "*reloaders*" who go after previously victimized people to take them for more by either continuing sales or by posing as agencies who work to obtain restitution to telemarketing victims, for a price.

3.9 "Midnight Dumping"

Environmental crimes – and their prosecution - are the new growth sector. Almost non-existent before the 1970s, they exploded through the 1980s and 1990s for three reasons. One was the growing public awareness of the extent of and dangers from ecological damage; a second was a general swinging back towards criminal enforcement after two decades of favouring decriminalization; a third was that cracking down on polluters gave governments an opportunity to defend the environment, and as such, appease the electorate's concerns, without having to face the wrath of industrial vested interests, which could have resulted from alternative initiatives.

Prior to the 1970s, hazardous waste was treated little differently than ordinary garbage – it was incinerated, accumulated at the point of production, or dumped into municipal landfills. But new regulations forced corporations who produced the stuff to assume responsibility for safe disposal, and called into existence a new breed of waste brokers, licensed haulers and government certified disposal firms, typically small and intensely competitive. The easiest way to raise profit rates was to cut corners by reducing or sometimes avoiding entirely the expensive and time-consuming process of effectively containing, neutralizing, or recycling hazardous waste products. Big corporations were often complicit – they would pay the disposal firms much less than what it should have cost to safely handle the material, with the knowledge that if the material were handed over to a licensed disposal firm, their own legal liability ended.[15] Small producing companies on the other hand would be more likely to just get rid of it on their own. The result in both cases was a boom in "midnight dumping."

Whether the job was done by the generating company or the haulage and disposal firm, the fate of the hazardous waste was the same – it ended up, as before, mixed with regular garbage in ordinary landfills, dumped in rivers or lakes, abandoned in corroding barrels in old truck trailers beside a road or in a derelict warehouse. Alternatively it might be resold in the guise of pure chemicals to unsuspecting customers, often in developing countries. Yet another way of getting rid of the stuff was graphically demonstrated in St. Basile-le-Grand in 1988 when one of the town's volunteer fireman was hired by a waste disposer to torch a warehouse full of PCBs.

The story began when a federal Environment Ministry investigator, whose job had included the task of making an inventory of all the waste PCBs in Quebec, left the government and set up a series of companies to haul away, store, and attempt to safely dispose of the province's burgeoning supply of discarded PCBs. For a time he seemed to be genuinely searching for a solution. But when the Quebec Environment Ministry refused him permission to build an incinerator, and followed up by rejecting his request to build more warehouse space, he also stopped spending money to maintain his existing ones. In addition he began forging inventory

[15] This was analyzed by Andrew Szasz, "Corporations, Organized Crime and the Disposal of Hazardous Waste: an Examination of the Making of a Criminogenic Regulatory Structure," *Criminology* 24(1), 1986.

statements to indicate he had collected less PCBs than he really had, permitting him to cheat on the income taxes due on what the companies paid him to haul away the stuff as well as to exceed Quebec-imposed limits. Furthermore he forged labels on barrels of liquid PCBs to fool inspectors, and sometimes moved other barrels out of the warehouses before those inspectors arrived – somehow he always knew in advance when they were due. Although he lost his license to collect more PCBs in 1985, he was still liable for those previously collected. In any case, he did not bother to tell his clients, simply creating a new transport company with no license to haul the stuff as before, therefore increasing the amount of tax-free money he could skim. Meanwhile the cash was being siphoned off to the USA The condition of his warehouses deteriorated so badly, birds flew in through the broken windows and set off the alarms. To deal with that problem, he simply cut off the alarm system. Finally came the arson job, by which time the entrepreneur had followed his money to the USA where he still resides.[16]

There is yet another, even more profitable possibility for getting rid of the stuff if it is readily flammable, namely to mix it with diesel or heating oil, and sell it as fuel. One particularly notorious incident involved a hazardous waste disposal firm in Buffalo that linked up with a distributor of bootleg gasoline. Fuel trucks would pick up the liquid wastes, in total several million gallons, allowing the tanks to fill to 10-15% of capacity. Then they would fill the rest with regular fuel. In addition, a compartment was installed at the top of the tank and filled with fuel dyed red, so that it appeared to be heating oil which is not subject to excise tax. The stuff was trucked into Canada and sold off to service stations and trucking companies at a discount of two to five cents a litre off regular prices. In short, there were three distinct sources of profit – fees for disposal of waste, reduced taxes from disguising the fuel as heating oil, and profits from the wholesaling of bootleg automotive fuel. The scam cost Ontario at least $100 million in lost taxes during the five years it operated, while also discharging dioxin and furans into the atmosphere when the fuel was burned.

This is a clear cut case of commercial crime. Not only was there deception in the acquisition of the waste on the pretext of it being legitimately and safely disposed of, but there was also a fraud against purchasers of the adulterated fuel oil. It involved income redistribution – from the generator corporations in fees for services that were not provided and from the government in tax losses. Like all classic commercial crimes, it took place within a regular business setting and was financed by normal bank instruments.

When the story of the scam broke, there were press reports suggesting that both the disposal company and the gasoline bootlegger were “mob-linked.” This is a frequent claim in cases of illegal toxic waste disposal on both sides of the border. In fact more detailed analysis suggests that in a few places where traditional “organized crime” was already powerful in the ordinary garbage business, for example, in New York and New Jersey, it was easy for their firms to move into the toxic waste disposal business as well.[17] But there are two important modifications necessary.

First, in the great majority of cases where crimes have been charged, the culprits have been regular waste disposal firms with no proven (and in most cases no imaginable) link to

[16] The information in this case is based on interviews by a McGill student, who was involved in this project, with the now-retired Sureté officer who headed the investigation, and extensive press coverage in *La Presse* from 1988 to 1998.

[17] The best known exposition of this position is Alan Block and Frank Scarpitti, *Poisoning for Profit: the Mafia and Toxic Waste*, New York: 1985.

"organized crime." It was industry insiders who had the technical knowledge to bend or break the rules with relative impunity. Typically they did not start crooked, but went bad over time as competition stiffened and opportunity emerged.[18]

Second, even where suits citing the *Racketeer Influenced and Corrupt Organizations Act* (RICO) in the USA forced "mob-linked" waste haulers out of the business, as in New York, opening the market to the big corporate waste disposal firms, the results were less reductions in environmental crime than changes to the identity of whom committed it. The two largest North American waste firms both ran up a lists of criminal indictments and civil violations – for bribery, price fixing, predatory pricing, selling toxic laden waste under false labels, and midnight dumping – that would have done any Mafia don proud.[19]

[18] Donald Rebovich, *Dangerous Ground: the World of Hazardous Waste Crime*, New Brunswick: Transaction Publishers, 1992.
[19] Timothy Carter, "Ascent of the Corporate Model in Environmental-Organized Crime" *Crime, Law & Social Change*, 31, No. 1, 1999.

4.0 Implications for the Criminal Justice System

The typology suggested has interesting implications with respect to definitions of offences, prioritization of harm, division of responsibility for complex actions, limits to growth of criminal activities, and alternative control measures.

This typology not only aids classification, but can be useful in questioning whether or not something really should be a crime at all. Take, for example, insider trading. Insider trading is not a predatory crime – it does not involve the forced transfer of property. It is not a market-based crime – the object of the exchange, securities, is perfectly legal. It is not even clearly a commercial crime – to trade on privileged information in order to capture profits from market movements which take place for independent reasons is quite different from rigging a market to make it move in a particular direction. With insider trading there is no victim in the proper sense. What is at issue is not a contest between predator and target over forcibly or fraudulently redistributed wealth, but a quarrel between two sets of investors over distribution of profit, the kind of thing sensibly left to the civil courts to sort out. With stock markets as with race tracks, it should never be forgotten that insider tips can provide an advantage but, unless combined with painting the tape (i.e., buying and selling among the same investors for the sole purpose of inflating trading activity in order to draw attention to the exchanged security/ies) or doping the horse, can never guarantee the results. (See Appendix IV for more details.)

The typology is also useful in judging seriousness. It makes clear that it take two to commit a market-based offence – there can be no market unless there is a supply side and a demand side. Therefore there is no victim in any normal sense – that is why it is common to allege that the real victim is "society," a phrase that is essentially meaningless. On the other hand, with predatory and commercial offences, there is an unwilling or a duped victim. Furthermore, while in a commercial or predatory crime, the "supplier," so to speak, takes the initiative, illegal markets are clearly demand driven. Therefore, in an illegal market transaction the customer is, in a sense, guiltier than the supplier – though the criminal justice system works on precisely the opposite assumption. Thus, the typology also suggests that purportedly nasty crimes like trafficking in drugs, which involve fair market exchange, are in a fundamental way cleaner than supposedly less malign ones like telemarketing fraud where unsuspecting people are ripped off. Yet the punishments are meted out in reverse order.

Furthermore, the typology permits the deconstruction of an act into a series of constituents, which better illustrates the chain of responsibility and the flow of command. This is the case, for example, with auto theft. While "joy-riding" involves a purely predatory act, sale of stolen cars might fall more into the predatory or the market-based category depending on the sequence. Sometimes cars are stolen, and the thieves attempt subsequently to sell them – with no prior guarantee of success or of price in the event of success. (Most such cars probably end up in chop shops.) Such an act should likely be seen more as predatory because the sale was a secondary part of the process both in sequence and in apparent motivation. However, in more sophisticated operations, cars are stolen to order, with payment terms pre-negotiated. In this instance the market-based crime precedes and creates the need for the predatory act. Use of the typology then permits isolation of, not just the sequence, which is more or less in the nature of things, but the driving force (no pun intended) behind a crime like auto theft.

Another obvious advantage is clarity of meaning. It gives a substitute for sloppy categories like economic crime, business crime, commercial crime, white collar crime, etc., which are poorly defined, if not indefinable, and often confuse acts with actors. It lays the stress on what makes crime different, rather than giving the illusion that there is in the outside world a catch-all category of "crime" committed by a readily definable subset of evil beings.

Yet another advantage is to shift away from technological fetishism – terms like *telemarketing fraud*, *computer-assisted crime*, etc. In fact it suggests that even terms like *credit card fraud* might best be avoided. As demonstrated, what takes place in credit card offences is a series of distinct acts – from theft to business fraud. This is a widespread problem with popular nomenclature. A term like *intellectual property crime*, for instance, when dissected according to this terminology, would appear to consist of acts of theft, underground trafficking, and commercial misrepresentation, all of which are confusingly lumped together in a common category, a procedure which surely makes understanding, not to mention the evolution of effective preventive and deterrent policies, more difficult.

The optimist might add that such a terminology might provide some guide to drastically simplifying the existing criminal code which is a bizarre amalgam of overlapping offences, some so arcane as to be ridiculous. Alas, given the complexity and costs of such an enterprise, this hope remains idealistic.

At the same time, it must be stressed that this typology is useful primarily in revealing salient *economic* characteristics. These are certainly not the only things that should be understood about crimes. There are a range of social factors, including those pertaining to motivation (profit is never a sufficient explanation) that are obviously relevant. Furthermore, different terms can be used to highlight different characteristics which might be relevant for different purposes. Thus, as noted supra, the term *environmental crime* is useful in so far as it points towards a class of acts directed against the biophysical environment. But when an economic typology is employed, actual offences can fall into any of the three categories. Poaching is clearly predatory, although any subsequent sale of the results fits the market-based category; trafficking in CFCs, a regulated (in some places, banned) commodity, is a market-based offence; while illegal dumping of toxic waste falls into the commercial category. When this typology is used, the stress falls on capturing the economic nature of the action, not necessarily all of the social consequences.

Appendix 1: The Sweatshop and its Criminal Milieu

One of the most striking examples of the mixing of various offences in a self-supporting matrix of criminal activity, and its interface with the apparently respectable corporate world, occurs in the case of the garment district sweatshop.[20]

The garment districts of the big North American cities had a long history of criminal association. Mobsters entered at the invitation of bosses in the 1920s to smash unions. The mobsters then stayed to organize cartels of truckers. Truckers in turn allocated sweatshops and jobbers among themselves, swapping them back and forth or selling them outright. If a manufacturer wanted to use an independent trucker, that was fine – provided the manufacturer paid twice.

Over time the criminal hold extended to actually financing, usually through the front of trucking companies, the operation of sweatshops, and to controlling the flow of orders. Typically a jobber who received a request from a retail chain would contact, not the sweatshop, but the trucking firm to whom the jobber was "married," and the trucking firm would allocate the manufacturing to a particular shop. It actually meant stability to the industry – there was no more cut-throat competition among shops or trucking firms. If the mobsters increased the prices of trucking services, the hikes applied across the board, permitting the industry to simply pass on the extra in price increases, or, much more commonly, to offset the extra costs by squeezing whoever was below them in the pecking order. Thus, retail chains demanded lower costs from the jobbers, the jobbers cut back on what they would pay manufacturers, and the manufacturers would take it out of the hides of the workers, reassured by the absence of unions – which the mobsters kept at bay.

The labour supply of the typical garment district is based on multiple forms of criminality. Sweatshop workers are typically: first time entrants into the labour force with no previous documented existence on which taxes and social security assessments can be based; moonlighters from formal employment, working for tax-free cash on the side; people cheating the welfare or unemployment insurance departments; and, probably most important in recent decades, illegal aliens in a state of debt-bondage to the immigrant smuggling rings who brought them into the country. Moreover the actual enterprises, blocked from the legal capital market by the lack of formal books to audit or collateral to pledge, often rely for financing on loan sharks who might be recycling criminal money, or, as happened often in New York, on the same trucking companies who control the movement of raw materials and output.

Thus taxes were evaded; wages were reduced; social security charges were unpaid; and regulations regarding working conditions were ignored. But on a brighter note, what the workers lost in wages and benefits and the public sector in revenue turned up on the other side of the balance sheet in the form of extra profit. This in turn got nicely divided between two sets

[20] Information was provided by Professor Alan Block of Pennsylvania State University. See also his edited work, *The Business of Crime*, Boulder, Colorado: 1991, particularly the introduction and the documents on sweatshops. See also Peter Reuter, "Racketeers as Cartel Organizers" in Herbert Alexander, *The Politics and Economics of Organized Crime*, Lexington, Mass.: Lexington Books, 1985. These were supplemented by media sources, and by one interview conducted by a participating McGill student with a former jobber in the garment trade who had dealt with the "organized crime" figures extensively.

of participants. The big, respectable retail firms that subcontracted to the jobbers took their share in the form of increased corporate income; and mobsters raked in their returns in high interest charges, kickbacks, and extortion payments as well as from the occasional extra like the opportunity to place mob associates on the payroll of participating companies or to profit from alien smuggling.

In all, it was an astounding mixture of predatory (e.g., extortion, social security fraud), market-based (e.g., illegal alien smuggling, recycling criminal money), and commercial (e.g., usury and price-fixing cartels) crimes, ultimately underwritten by the respectable fashion industry without whose quiet complicity it could never have survived. Yet it does.

It had long been presumed that the phenomenon was dying, the result of (non-Communist) union pressures and the universalization of the social security system on the one hand and the rise of cheap labour centres in South East Asia and liberalized global trade flows on the other. But the decline of union power, rising transport costs, increased wages in the Pacific Rim and the growing availability of marginalized labour in North America meant that the sweatshop returned with a vengeance to the North American garment trade in the 1970s and beyond. Waves of undocumented aliens, especially Latinos but also Chinese rolled in as the sweatshops returned from Asia. In fact, when the sweatshops returned, they had sometimes acquired Chinese mob partners who arranged the alien labour flows. Illegal aliens were easy to keep in line – by the threat of being exposed and deported. They were paid less than minimum wage and earned no overtime, while they remained uncovered by health, disability, or any other form of social insurance. Sometimes entire families were employed, with their earnings going directly to the alien smuggling rings until their debts were discharged. By the mid 1990s, it was reckoned in the USA that about half of all manufacturing operations in the garment trades could be classified as sweatshops. There were no comparable studies in Canada, where the sweatshop business, though not as common, certainly makes its presence felt, particularly in Montreal.

Furthermore, the phenomenon was also rife across the USA in fruit-picking, construction, and meat-packing which had the highest percentage of occupational accidents in the country (an amazing 36% of production workers were injured on the job every year.) Despite this, the garment trade situation in New York (the one that relates closest to Montreal) attracted the most attention. In New York, the trucking firms were supposedly controlled by the Gambino family. Hence prosecutors went after them with a vengeance. They claimed that mob extortion was the primary cause of the decline of the industry in New York. When attempts to hit the Gambino brothers with coercion and extortion charges collapsed (for the simple reason there was no evidence of any direct threat) they opted for a divestiture deal, then promptly congratulated themselves in public for saving the consumer the 3 to 7% formerly imposed in the form of a "mob tax."[21]

Yet, once the uproar subsided, there were those in the garment trade who insisted that the supposedly criminal trucking firms would be sorely missed. Much as had happened in the garbage business, the legitimate firms who moved in to replace them quickly established a reputation for hiring illegal aliens, dodging taxes and disregarding safety regulations. They were also seen as far less efficient, hardly a surprise given that the trucking cartel run by mob associates had over fifty years of experience. Also the old Gambino-linked companies provided

[21] *New York Times* February 27, 1992.

far better security for the trade, for free.[22] Far from lauding the introduction of competition, some in the trade lamented the inability to take for granted uniformity of rates. Others claimed that the "mobsters" had been a real benefit to an industry under siege from sweated labour centres abroad – they helped locate work for jobbers and when jobbers had trouble meeting bills, the "criminals" would let them go for months without paying, while a bank would likely have shut them down. Violence to enforce shipping contracts was extremely rare. And while trucking costs dropped after the divestiture, in reality the cost of shipping a $40 garment had never been more than 40 cents. The real reason prices dropped sharply for garments had little or nothing to do with breaking the "cartel." Rather it reflected that the victory over the New York mob was followed closely by a major recession.[23] As one retail consultant put it, "The fact that truckers may have dropped prices may help ease pain by a nickel's worth."[24]

[22] Something which the law interprets as extortion may be, in the eyes of the person on the paying end, actually represent a legitimate outlay for a genuine service which they cannot, by virtue of social or economic position, obtain from legal sources. See especially Diego Gambetta, *The Sicilian Mafia - the Business of Private Protection*, Cambridge Mass.: 1993 This work raises very serious questions about the traditional treatment of the "Mafia."

[23] *Women's Wear Daily*, February 27, 1992, March 24, 1992; *New York Times* June 12, 1992.

[24] *Newsday*, July 2, 1995.

Appendix II: The Curious Case of Insider Trading

The typology of profit-driven crime not only aids classification, but it can also be useful in questioning whether or not something really should be a crime at all. Take, for example, insider trading.

Insider trading was first conceived as an offence involving officers of corporations about to merge who took advantage of that knowledge to speculate to their own profit. It was then extended beyond its original mandate to embrace employees of law firms planning mergers and acquisitions, merchant banks involved in financing them, reporters for financial newspapers who got leaks, and even janitors who picked up discarded memos in the trash. If any of them used such information to anticipate stock price movements for their own gain, they were guilty of insider trading.[25]

In most countries for most of their history, insider trading, if it was subject to any penalties at all, was regarded as a civil offence. It was at the end of the 1970s, with the weakening of the general decriminalization sentiment that had been prevalent in the previous two decades, that the modern pattern of criminalization began.

The driving force seems to have been a big shift in the nature of stock market activity. Beginning in the late 1970s, and accelerating for the next decade, mergers and acquisitions began setting the tone. What would happen is that a corporate raider, backed by an investment banker who floated the necessary junk bonds, would launch hostile takeover bids for cash-rich corporations, then use whatever could be looted from the prize – the contents of the treasury, the proceeds from selling off profitable divisions, or whatever could be squeezed from the blue and white collar workers in layoffs and pay cuts – to pay off the high-interest loans used for the takeover. The target company might try to resist by buying up its own shares, simultaneously taking them off the market and driving up the price, and therefore the acquisition cost, of those left. They might be aided by greenmailers, who caught wind of the takeover attempt, cornered some stock, then offered it to the targeted company at a huge markup. If the defensive strategy failed, the top executives could usually arrange a golden parachute. It was in this hot-house atmosphere that *insider trading* ceased to be a term used by financial industry insiders and became part of the public lexicon.

The way it worked, takeover arbitrageurs would take positions in anticipation of takeover announcements and then sell once the market rose. Apart from the frequency with which the "arbs" themselves turned out to be the source of rumours about pending takeovers to rig the market, the key to their success was how well they anticipated actual takeovers. And that often required a little help from friends inside – inside the investment banking houses that financed the bids, the law firms that drew up the documents, the printing houses that produced tender-offer brochures, and once even a psychiatrist who coaxed the information out of an executive's wife during therapy. The executive's wife aside, friends who provided the tips usually got a cut of the profit. With suitable information the arb would do two things – buy the stock of the takeover target because it was bound to rise, and short the stock of the bidding company

[25] For an examination of the Wall Street insider trading scandals of the mid to late 1980s, see R. T. Naylor, *Hot Money and the Politics of Debt*, 2nd Ed. Black Rose Books, Montreal: 1994, Postscript II.

because, loaded with extra debt, its shares were likely to fall.[26] It was precisely this kind of activity that led to the great insider trading scandals that shook Wall Street in the mid 1980s. Yet for all the storm and fury, it remains unclear just why insider trading should be a crime.

To begin with, once insider trading ceased to be confined to officers of corporations actually involved, it became unclear just where the frontiers between "inside information" and the normal search by potential investors for data on which to base a stock purchase really fell. (If all investors have the same information, there will be virtually no differences in expectations and therefore virtually no trades – at which point the markets become both thin and inefficient.) Simultaneously the core issue ceased to be breach-of-fiduciary-duty, and became simply obtaining profit, that other people thought should rightfully be *theirs*, from correctly guessing stock price movements. This tendency to seek an ever-expanding mandate while blurring the central moral issues seems a danger inherent in all attempts to use the criminal code for purposes of economic regulation.

However, even if the offence of insider trading were redefined to accord better with its original mandate, its logic could still be open to question. Insider trading is not a predatory crime – it does not involve the forced transfer of property. It is not a market-based crime – the object of the exchange, securities, is perfectly legal. It is not even clearly a commercial crime – to trade on privileged information to capture the profits from market movements that take place for independent reasons is quite different from rigging the market to make it move in a particular direction. With insider trading there is no victim in the classical sense. What is at issue is not a contest between predator and victim over forcibly or fraudulently redistributed wealth, but a quarrel between two sets of investors over distribution of profit. In the past (and in the bulk of instances also in the present) most such disputes were (are) left to the civil courts. With stock markets as with race tracks, it should never be forgotten that insider tips can provide an advantage but, unless combined with painting the tape or doping the horse, can never guarantee the results.

On balance, it is difficult to avoid the impression that insider trading was criminalized, much the way anti-trust actions were before it, for reasons that are more ideological than economic. Anti-trust law criminalized conspiracy in restraint of trade not to guarantee competition – there are far better ways to do that – but because certain business practices threatened the *political* legitimacy of the free-market system by giving the impression that it was biased in favour of "big business."[27] Similarly, the reason for criminalizing insider trading seems to have been to reassure would-be investors that the stock market does not unfairly favour some at the expense of others.

[26] This process is analyzed in R. T. Naylor, *Hot Money and the Politics of Debt*, 2nd Ed. Montreal: Black Rose Books, 1994, Postscript II.

[27] John Braithwaite, *Corporate Crime in the Pharmaceutical Industry*, Routledge, London: 1984, 159.

Appendix III: The Loan-sharking Scene in Montreal Today

Although there may be big time sharks associated in some way with gangs and groups, it seems that most in Montreal today are strictly neighbourhood operators with never more than $1000 on the street. Most taverns have their sharks, who could be the manager. But the most common place to negotiate a quick loan seems to be a *dépanneur* – whose owners are rarely particularly scary. Most sell food, cigarettes (sometimes from under the counter, tax-free), beer, and cheap wine on credit, so it is natural extension for them to advance cash to clients they know and trust. Interest rates seem to be much higher than for more orthodox sharks, those detached from any link to retail sales. The money goes mainly to finance drinking, drugs, and gambling – if it went to food, the normal process of retail credit would be used instead. It seems that some small-scale loan sharks will lend to women more easily than men – they have less trouble getting welfare payments to amortize the loan, and, *in extremis*, they can offer sex in payment, directly or indirectly. Many of these characteristics probably show up in pawn shop-based operations too.

Even when sharks are big time and unaffiliated with any retail institution, there is no need for them to have mob links. Three years ago a student of mine approached a prominent loan shark (who claimed he had so much money on the street, he lost track of it – so the student designed a spread-sheet that would solve the problem, fortunately never offering it to the shark.) The pretext was that the student needed $1000 to pay off an overdue credit card debt. He returned the next week with the $1000 plus $70 for interest (7% per week). He thereby both won the shark's confidence and aroused his curiosity about what went on in a McGill course called "The Underground Economy." It turned out that "Nick the Shark" had been in business for about 30 years, operating out of a bar he inherited on his father's early demise. Initially he began lending without interest the money from his father's life insurance policy to customers, most of them neighbourhood characters with a weakness equally for booze and gambling. But when he heard that some bragged about how they had taken him for a ride, Nick took to charging interest.

Today most of his customers are low-income individuals, perhaps welfare and unemployment insurance recipients, who are also bad credit risks for regular financial institutions. The rule is to lend to them only small sums, the limits set by the size of their payments from the government, which also makes them quite secure. Interest varies from 5-10% per week, depending on the individual and the amount at risk. Interest must be paid weekly though the principal can remain outstanding more or less forever.

However, Nick also services another set of customers, much fewer in number, with considerably bigger loans. These are usually professional black-market dealers who handle wholesale lots of stolen goods, drugs, or smuggled booze and cigarettes. They, unlike the retail customers, normally return part of the principal along with each weekly interest payment. If they get apprehended, they are responsible for paying back only the principal plus 10% as long as they are in prison. But, once they are out, regular interest charges start to apply to both the principal plus the extra 10%. However their rate is lower than the retail clients, falling into the

3-5% per week range. In this respect, Nick operates much like any legitimate financial institution – large business clients can borrow larger sums at lower rates.

In almost all cases of failure to meet scheduled payments, the deal can be renegotiated to fit the client's financial capacity. However, for long-term receivables from difficult clients, Nick subcontracts to a collector who gets 30% of whatever he can recover. This share is not much different from that charged by legal collection services whose methods can be almost as impolite and threatening.

Appendix IV: Popular "Telemarketing" Frauds

The top ten "telemarketing" frauds reported to the National Consumers League's National Fraud Information Centre in the first six months of 2000 are:

- Prizes and Sweepstakes: *phoney prize awards requiring payment of fees first*
- Magazines: *fake sales or renewals for subscriptions never received*
- Credit Cards: *phoney promises of credit cards requiring advance payment of fees*
- Work-at-Home: *kits sold with false promises of profits*
- Advanced Fee Frauds: *promises of loans requiring advance payment of fees*
- Telephone Slamming: *phone service switched without the consumer's consent*
- Credit Card Loss Protection: *unnecessary insurance sold using scare tactics or misrepresentations*
- Telephone Cramming: *billing consumers for optional services they never ordered*
- Buyers Clubs: *unauthorized charges for memberships in buyers clubs consumers never agreed to join or didn't agree to renew after initial trial offer*
- Travel and Vacation: *offers of free trips or discount travel that never materialize*

Top Ten Telemarketing Fraud Complaints, January 1, 2000 - June 30, 2000